SUPREME COURT OF THE UNITED STATES.

No. 187.

JOHN OVERTON, ROBERT C. BRINKLEY, ROBERTSON TOPP and JAMES JENKINS, Plaintiffs in Error,

VS

ELIJAH CHEEK and GEORGE W. CHEEK.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF WEST TENNESSEE.

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UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the Judges of the Circuit Court of the United States for the District of West Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you, wherein George W. Cheek and Elijah Cheek are plaintiffs, and John Overton, Robert C. Brinkley, Robertson Topp, and James Jankins, are defendants, a manifest error hath happened to the great damage of the said John Overton, Robert C. Brinkley, Robertson Topp, and James Jankins, defendants aforesaid, as by their complaint appears.

We being willing that the error, if any hath been made, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment hath been given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the 19th day of March, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] JAS. L. TALBOT, Clerk of the Circuit Court
of the United States for the District of West Tennessee.

This writ of error is allowed this 14th day of March, 1860.
WM. H. HUMPHREYS, Judge, &c.

(No supersedeas ordered.) W. H. H.

Endorsed: John Overton, and alias, *vs.* Elijah Cheek and George W. Cheek. Writ of error. Filed in the clerk's office of the Circuit Court U. S. West Tennessee, March 19th, 1860.
JAS. L. TALBOT, Clerk said Court.

Citation.

United States of America, *ss.*

To George W. Cheek and Elijah Cheek, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the capitol in the city of Washington, in the District of Columbia, on the first Monday in December next, pursuant to a writ of error filed in the office of the clerk of the Circuit Court for the Western District of Tennessee, wherein John Overton, Robert C. Brinkley, Robertson Topp, and James Jankins, are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, West H. Humphreys, one of the Judges of the Circuit Court for the District of West Tennessee, this 14th day of March, one thousand eight hundred and sixty.

W. H. HUMPHREYS.

Executed the within citation by reading and delivering a copy of the same to Elija Cheek, on Monday the nineteenth day of March, A. D. 1860. B. B. WADDELL.

State of Tennessee, Shelby County.

Personally appeared before me, Josiah Horne, Commissioner of the United States Court for the District of West Tennessee, B. B. Waddell, with whom I am personally acquainted, and under oath in due form of law that the above return of this citation is true, that he executed the same upon Elija Cheek by reading and delivering to him a copy of the same, on the 19th day of March, A. D. 1860, as stated in the above return. B. B. WADDELL.

Sworn to and subscribed before me this 20th day of March, 1860.

J. HORNE, Commissioner, &c.,
U. S. for District of West Tennessee.

Service acknowledged this 20th March, 1860.

T. L. SULLIVAN.

Executed the within on Smith P. Bourkhead by delivering to him a copy of the within citation, on the 20th day of March, 1860.

B. B. WADDELL.

State of Tennessee, Shelby County.

Personally appeared before me, J. Horne, Commissioner for the United States Court for the District of West Tennessee, B. B. Waddell, who made oath in due form of law that he executed the within citation, as stated in the above return, by delivering to Smith P. Bourkhead, on the 20th day of March, 1860.

B. B. WADDELL.

Sworn to and subscribed before me this 20th day of March, 1860.

J. HORNE, J. P.,
U. S. Com'r for Dist. of West Tennessee.

United States of America.

Pleas at a Circuit Court of the United States, in the 8th Circuit, for the District of West Tennessee, at a term thereof begun and held at the court-house in the town of Jackson, on the third Monday in the month of September, in the year of our Lord one thousand eight hundred and fifty-six. Present and holding said court, the Honorable West H. Humphreys, Judge of the District Court of Tennessee.

Be it remembered, that, on the 1st day of July, 1856, Elijah Cheek and George W. Cheek executed the bond that follows before the clerk of said court, viz:—

Know all men by these presents, that we, E. Cheek, George W. Cheek, and Felix M. Fletcher, are held and firmly bound unto R. C. Brinkley, Robertson Topp, John Overton, and James Jankins, in the sum of one hundred dollars, to be void on condition that we, or either of us, do pay and satisfy all costs that may accrue in behalf of the prosecution of a suit this day commenced by E. Cheek, &c., in the Circuit Court of the United States for the District of West Tennessee, at Jackson, against them, on failure of the plaintiffs to prosecute their said suit with effect.

Witness our hands and seals this 1st day of July, 1856.

E. CHEEK, [SEAL.]
G. W. CHEEK, [SEAL.]
FELIX M. FLETCHER. [SEAL.]

And thereupon the clerk of the said court issued the following summons:—

The President of the United States of America,
To the Marshal of the District of West Tennessee, greeting:

You are hereby commanded to summon Robert C. Brinkley, Robertson Topp, James Jankins, and John Overton, citizens of the State of Tennessee, if they be found within your district, to appear before the Judge of the Circuit Court of the United States, in the Eighth Circuit, for the District of West Tennessee, at Jackson, on the third Monday in September next; and then and there to answer George W. Cheek and Elijah Cheek, citizens of Arkansas, and R. L. Kay, Alex. J. White, S. B. Curtis, A. G. Knapp, and E. H. Porter, the last five of whom, having no legal or equitable interest in the suit, are nominal plaintiffs, and sue for the use and benefit of George W. Cheek and Elijah Cheek, citizens of Arkansas, of a plea of covenant broken, to their damage $50,000.

Herein fail not, and have you then and there this writ.

Witness, Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this third Monday in March, in the year 1856, and of the independence of the United States the 80th.

JAS. L. TALBOT, Clerk of said Court.

Upon said summons are these endorsements, viz:—

CHEEK }
vs. }
BRINKLEY. }

"Issued July, 1856. Came to hand same day issued.
"ROBT. I. CHESTER,
"Marshal West Tennessee.
"By his Deputy, CHARLES D. McLEAN."

"Executed same day issued, on Robert C. Brinkley, John Overton, Rob. Topp, and James Jankins, and a copy of the declaration delivered to each defendant at the time of service.
"ROBT. I. CHESTER,
"Marshal of West Tennessee.
"By his Deputy, CHAS. D. McLEAN."

And the said plaintiffs, upon their application for the summons issued against the parties defendant aforesaid, filed their declaration in the clerk's office in the words and figures as follows, viz:—

United States of America.

In the Circuit Court of the United States, in the Eighth Circuit, for the District of West Tennessee, at Jackson.

Elijah Cheek and George W. Cheek, citizens of the State of Arkansas, and R. L. Kay, Alex. J. White, S. B. Curtis, A. J. Knapp, E. H. Porter, citizens of the State of Tennessee—the last five of whom having no legal or equitable interest in this suit, are nominal plaintiffs, and sue for the use and benefit of George W. Cheek and Elijah Cheek, of Crittenden County, Arkansas, *plaintiffs,* complain of Robert C. Brinckley, Robertson Topp, John Overton and James Jankins, all of whom are citizens of the State of Tennessee, *defendants,* who have been summoned to answer a plea of *covenant broken:*

For that whereas heretofore, to wit, on the 3d day of September, 1851, at Memphis, in the State of Tennessee, and within the district aforesaid, the said Robert C. Brinckley, Robertson Topp, John Overton and James Jankins, with George W. Smith, who is not sued in this action, made and executed their certain covenant, which is in the words and figures following, to wit:—

Know all men by these presents, that we, Robert C. Brinckley, Robertson Topp, John D. Armour, James Jankins, W. L. Vance, John Overton, John S. Claybrook and George W. Smith, are held and firmly bound unto George W. Cheek, Elijah Cheek, R. L. Kay, Alex. J. White, S. B. Curtis, A. G. Knapp and E. H. Porter, in the just and full sum of ten thousand dollars ($10,000), for the payment of which well and truly to be made, we and each of us bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated this thirtieth day of September, 1851. The condition of the foregoing obligation is such, that whereas the above named R. C. Brinckley, R. Topp, Jno. D. Armour, James Jankins, W. L. Vance, Jno. Overton and Jno. S. Claybrook, this day filed a bill of complaint in the clerk's office of the Chancery side of the Common Law and Chancery Court of the city of Memphis, for the district composed of the counties of Shelby and Tipton, in the western division of the State of Tennessee, against George W. Cheek, Elijah Cheek, R. L. Kay, Alex. J. White, S. B. Curtis, A. G. Knapp and E. H. Porter, and prayed for and obtained an injunction upon the matters set forth in said bill. Now, should the said Robert C. Brinckley, R. Topp, John D. Armour, James Jankins, W. L. Vance, John Overton and Jno. S. Claybrook, prosecute their suit on said bill with effect, or in case they shall fail therein, shall pay to the said George W. Cheek, Elijah Cheek, R. L. Kay, Alex. J. White, S. B. Curtis, A. G. Knapp and E. H. Porter, the aforesaid defendants, and each of them, all such damages as they, or either of them, may sustain by reason of wrongfully suing out said injunction, and all such costs as may accrue in consequence thereof, and stand to and abide by and perform such order, judgment or decree as may be made by said court touching said injunction, then the above obligation to be void; otherwise to remain in full force and virtue; which said bond is signed, R. C. Brinckley by E. M. Yugee, his attorney, Robertson Topp, James Jankins and George W. Smith, sealed with their seals, and is now here to the court shown.

And the said plaintiffs aver, that upon an application duly and formally presented to the Hon. John C. Humphreys, Judge of the 11th Judicial Circuit in and for the State of Tennessee, an injunction was awarded to the said R. C. Brinckley, R. Topp, Jno. D. Armour, James Jankins, W. L. Vance, John Overton, and Jno. S. Claybrook, against the plaintiffs, forbidding and restraining them, their agents, servants, and attorneys, from running a packet from the city of Memphis to Mound City, or to any other point on the Arkansas shore at or near the town of Memphis, and forbidding and restraining them from transporting by their packet, or otherwise, any person or persons, or their effects, for pay, across the Mississippi River within ten miles of Memphis, and from diverting the travel from the ferry of the defendants in this suit; whereby they were restrained from running their said packet from the city of Memphis to Mound City, in Arkansas, or any point within ten miles of Memphis, and from transporting any person or persons and their effects for pay, for a long space of time, to wit, for the space of three years and six months.

And the said plaintiffs aver, that the said injunction bill came on to be finally heard by the honorable the Supreme Court of the State of Tennessee, at Jackson, Tennessee, at its April Term, 1855; and the said injunction was then and there dissolved, and the cause adjudged against the said defendants, and the said bill dismissed. And plaintiffs aver that the said defendants did not keep their said covenant, but broke the same, and did not prosecute their said suit with effect, but entirely failed therein.

And the plaintiffs aver that the said defendants have broken their covenant in this, that they have not paid them the costs incurred by them in defending said suit; by reason whereof they have sustained great damage, to wit, $500.

And the plaintiffs aver, the said defendants have broken their covenant in this, that they or either of them have not paid to the said plaintiffs a large amount of money necessarily expended and laid out by them for lawyer's fees in and about their suit, to wit, the sum of $2500; nor have they paid the plaintiffs a large sum of money, to wit, the sum of $1000, for expenses, charges, and costs necessarily paid by them in the conduct and management of said suit; by reason whereof they have sustained great damage, to wit, $3,500.

And the said plaintiffs aver, that the said defendants have broken their covenant in this, that they, the said plaintiffs, are and were the owners of the soil at Mound City, in the State of Arkansas; that they paid out and expended large sums of money in laying off a town at that place by streets and alleys, and the erection of a large public tavern-house and other houses for the accommodation of the public; that these lands became greatly enhanced in value by running their said packet to Memphis, and their tavern-house was very profitable to them; but by reason of the defendants wrongfully suing out the said injunction restraining the said plaintiffs from running their packet, thus interrupting and cutting off the water communication with the city of Memphis, the use and profits of the said tavern-house were greatly diminished, and the value of the lands materially reduced; by reason whereof the plaintiffs have sustained great damage, to wit, the sum of $5000.

And the said plaintiffs aver, that the said defendants have broken their covenant in this, that they or either of them have not paid to the plaintiffs the charges, costs and damages resulting from the total loss and destruction of their said packet, resulting from the enforcement of the injunction restraining them from running said packet; for the plaintiffs aver, that being so restrained as aforesaid, they were forced to cable their said packet to the bank of the Mississippi river; whereby, and by reason of the rise and fall of the river, and the winds and storms, without the fault or negligence of the plaintiffs, the said boat was sunk and lost to the plaintiffs; together with the machinery, tackle, furniture, &c., &c., belonging to said boat, by reason whereof the plaintiffs have been damaged $3000.

And the plaintiffs further aver, that the said defendants have broken their covenant in this, that they, the said plaintiffs, being the principal owners in the Memphis and St. Francis Plank Road Company, were using the said packet boat in the transportation of the hands, servants, horses, &c., &c., employed and used in the construction of said road. That by virtue of the injunction aforesaid, they were compelled to incur great expense in the employment of other means of transportation, to wit, an expense of $1000 ; whereby and by reason whereof, they were damaged to the sum of $1000.

And the said plaintiffs aver that the said defendants have broken their covenant in this, that they or either of them, have not paid to the said plaintiffs the damages sustained by them by reason of their wrongfully suing out the said injunction ; whereby, and by virtue of which, they, the said plaintiffs, were restrained and forbid from transporting any person or persons, or their effects, for pay, from Mound City, in Arkansas, to the city of Memphis, in Tennessee, or to any point within ten miles of Memphis, and for running their packet from the city of Memphis to Mound City, or to any other point on the Arkansas shore at or near the town of Memphis, and from transporting by their packet or otherwise, any person or persons, or their effects, for pay, across the Mississippi river, within ten miles of Memphis, for a great space of time, to wit, three years and six months ; whereby and by reason whereof, the plaintiffs sustained great damage, to wit, the sum of $35,000.

And the plaintiffs aver, that the said defendants have broken their covenant in this, that they have not paid them the costs, charges, and damages resulting from the enforcement of said injunction, whereby the plaintiffs were restrained and forbid from transporting the members of their family, their servants, agents and attorneys to and from Memphis to Mound City on their own packet ; but were compelled to pay out large sums for their ferriage and transportation on other boats ; by reason whereof, the said plaintiffs sustained great damage, to wit, the sum of $1000.

And so, the said plaintiffs in fact say, that the said defendants, or either of them, although often requested so to do, have not kept and performed their covenants and undertaking in said bond set forth, and by them made as aforesaid, but have broken the same ; and to keep the same with the said plaintiffs have hitherto wholly neglected and refused ; and still neglect and refuse, to their damage $50,000 ; and therefore they bring their suit.

BANKHEAD & SULLIVAN,
Attorneys for Plaintiffs.

And afterwards, on the 17th day of September, 1856, the defendants in this cause filed their *demurrer* to the plffs' declaration in the following words, &c. :—

R. C. BRINCKLEY, ROBERTSON TOPP,
JAMES JANKINS, and JOHN OVERTON,
against
GEORGE W. CHEEK, ELIJAH CHEEK,
R. L. KAY, A. J. WHITE, S. R.
CURTIS, A. G. KNAPP, and E. H.
PORTER.

And the said defendants, by their attorney, come and defend the wrong and injury, when, &c., and say, that the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for said plaintiffs to have or maintain their aforesaid action thereof against these defendants, and that they are not bound by law to answer the same; and this they are ready to certify. Wherefore, and for want of a sufficient declaration in this behalf, the said defendants pray judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against them, &c.

And the said defendants state and show to the court here the following cause of demurrer to said declaration, that is to say, that it appears in and by said declaration, that five of the plaintiffs in the said action, to wit, R. L. Kay, A. G. Knapp, Alex. J. White, S. R. Curtis, and E. H. Porter, are citizens of the State of Tennessee, and that the defendants herein are all citizens of the State of Tennessee. And also, that said declaration is in other respects uncertain, informal, and insufficient. TOTTEN & FORGA,
Atty's for Defendants.

Joinder in demurrer. BANKHEAD & SULLIVAN,
Atty's for Plaintiffs.

And afterwards, on the 18th day of September, 1856, the plaintiffs, by leave of the court, filed the following amendment to their declaration in this cause.

And said plaintiffs aver, that they are the only real and legal parties in interest in this cause. For that whereas, heretofore, to wit, on the 24th day of September, 1851, the said defendants sued out of the chancery side of the Common Law and Chancery Court of the city of Memphis, a certain writ of injunction, by which said writ of injunction, the plaintiffs, as well as R. L. Kay, A. J. White, S. R. Curtis, A. G. Knapp, and E. H. Porter, were enjoined and restrained from running a packet, or ferry-boat, from Memphis, in the district aforesaid, to the Arkansas shore of the Mississippi river, and from doing other things, more specifically set forth in said writ of injunction; and that afterwards, to wit, at a term of the Chancery Court aforesaid, the said R. L. Kay, A. J. White, S. R. Curtis, A. G. Knapp, and E. H. Porter, filed their answer or disclaimer to said suit in Chancery, and were thereupon discharged with their costs. And plaintiffs farther aver, that at the April Term, 1855, of the

Supreme Court of the State of Tennessee, the said bill of injunction was dismissed; and that thereupon the right to sue upon the said bond accrued to the said plaintiffs, George W. and Elijah Cheek. And the said plaintiffs further aver, that said R. L. Kay, A. J. White, S. B. Curtis, A. G. Knapp, and E. H. Porter, nor either of them, have not at present and never did have any interest whatsoever in said bond on which this suit is brought, or in the suit in Chancery in which the said bond was given. And that all right, title, and interest in and to said bond, or to any demand and claim for damages arising and growing out of the issuance of said injunction is now in the said plaintiffs, George W. and Elijah Cheek. All of which will appear by reference to a record of the said injunction suit, herewith filed.

BANKHEAD & SULLIVAN,
Attorneys for Plaintiffs.

And on the same day, to wit, on Thursday, the 18th day of September, 1856, the following proceedings of the said court are of record, to wit:—

GEORGE W. & ELIJAH CHEEK,
vs.
ROBERT C. BRINCKLEY, ROBERTSON TOPP, JAMES JANKINS and JOHN OVERTON.

The parties appear by their attorneys; and the defendants move the court, that the bond for prosecution in this suit is insufficient, and that the amount be enlarged to five hundred dollars; which motion is granted.

And thereupon, Benjamin F. Gates appeared in open court, and acknowledged himself to be held and bound in the penalty of five hundred dollars; conditioned that the plaintiffs shall well and truly prosecute their suit in this behalf with effect; or, in case they fail therein, to pay and satisfy all costs that may be adjudged against said plaintiffs.

And the said Benjamin F. Gates is duly justified as such *such* security.

And thereupon, the *demurrer* of the defendants to the declaration of the plaintiffs having been argued, and the court being well advised in the premises; for that, it appears to the court, that the matter of the said demurrer is not sufficient in law to preclude the plaintiffs from having and maintaining their aforesaid action thereof against the said defendants, therefore it is considered by the court, that the said demurrer be overruled, and that the defendants be required to plead to the plaintiffs' declaration.

And thereupon, the pleas being filed, by consent of parties this cause is continued as upon the affidavit of the defendants: therefore, it is considered by the court that the plaintiffs recover of the defendants the costs of this continuance, and of the present term; for which execution shall issue, directed to the marshal of West Tennessee.

Pleas.—The defendants come and defend, &c., and plead covenants performed. FORGA & TOTTEN.

The defendants have leave to plead in short as above in short, and have leave to give any matter in evidence under the above plea which could be legally pleaded. BANKHEAD & SULLIVAN
Plaintiffs' Attorneys.

And afterwards, to wit, on Thursday, the 16th day of April, 1857, and at a term of the said Circuit Court of the United States aforesaid, the following proceedings of the said court were entered of record. Present and holding the said court, Hon. West H. Humphreys, Judge of the District Court of Tennessee, viz :—

GEORGE W. CHEEK and ELIJAH CHEEK,
vs.
ROBERT C. BRINKLEY, ROBERTSON TOPP, JAMES
JANKINS, and JOHN OVERTON.

The parties appear by their attorneys ; and also came a jury of good and lawful men, to wit: Joel W. Royster, Joseph N. Lanour, William Butler, William Conrad, A. G. McCall, R. L. McLiskey, J. W. Dickson, Michael Peacock, William Malone, Edward Willis, Shelby Crittenden, and Stephen McAdoo, who being duly elected, tried and sworn well and truly to try the issues joined, on their oaths do say, that the defendants have not well and truly kept and performed their covenants in the declaration mentioned; and they assess the plaintiffs' damages by reason of the premises to four thousand seven hundred and fifty dollars ($4750), which sum includes lawyer's fees. Therefore, it is considered by the court, that the plaintiffs receive of the defendants, Robert C. Brinkley, Robertson Topp, James Jankins and John Overton, the damages so assessed by the jury as aforesaid, and their costs in this behalf expended, for which execution shall issue, directed to the Marshal of West Tennessee.

recover

And afterwards, on Friday, the 17th day of April, 1857, and during the same term of said court, the following proceedings in the said case are of record, viz :—

GEORGE W. CHEEK and ELIJAH CHEEK,
vs.
ROBERT C. BRINKLEY, ROBERTSON TOPP, JAMES
JANKINS and JOHN OVERTON.

The parties appear by their attorneys ; and the defendants by attorney move the court to grant them a new trial of the issues in this cause. And, on consideration of the motion, it is ordered by the court that the same be overruled.

And thereupon the defendants, by their attorneys, move the court in arrest of judgment upon the finding of the jury aforesaid. And, on consideration of the motion, it is ordered by the court that the same be overruled.

And thereupon the defendants move the court for a writ of error and supersedeas to the Supreme Court of the United States, to be held at Washington City on the first Monday in December next.

And thereupon the defendants present their bill of exceptions, and pray the court that the same may be signed and sealed, which is done accordingly.

And the defendants execute bond with security, conditioned as the law directs, which is approved by the court; and no citation is required, both parties being present in court and waive the same. And thereupon the said writs of error and supersedeas are granted accordingly.

Know all men by these presents that we, John Overton, Robert C. Brinkley, Robertson Topp, James Jankins, and John M. Lea and B. B. Waddell, are held and firmly bound unto George W. Cheek and Elijah Cheek in the just and full sum of nine thousand five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed with our names and sealed with our seals this 8th day of March, in the year one thousand eight hundred and sixty.

The condition of this obligation is this: That whereas the above bounden John Overton, Robert C. Brinkley, Robertson Topp and James Jankins, have prayed and obtained a writ of error from the judgment of the Circuit Court of the United States for the District of West Tennessee, in a cause therein, wherein the said George W. Cheek and Elijah Cheek are plaintiffs, and the said John Overton, Robert C. Brinkley, Robertson Topp and James Jankins are defendants. Now, if the said John Overton, Robert C. Brinkley, Robertson Topp and James Jankins, shall well and truly prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void; otherwise the same shall remain in full force and virtue.

JOHN OVERTON, [SEAL.]
JAMES JANKINS, [SEAL.]
By E. M. FORGA, Att'y.

ROBERTSON TOPP, [SEAL.]
By E. M. FORGA, Att'y.

R. C. BRINKLEY, [SEAL.]
By E. M. FORGA, Att'y.

JOHN M. LEA. [SEAL.]
Security, B. B. WADDELL. [SEAL.]

I approve of the above bond, and of the securities therein named.
Dated 14th March, 1860.

W. H. HUMPHREYS, Judge &c.

As clerk of the Circuit Court of the United States for the District of West Tennessee, I do certify that the foregoing is a correct copy of the original bond filed in my office on the 19th day of March, 1860, in the case of George W. and Elijah Cheek vs. John Overton and als., upon application for a writ of error, and the certificate of approval by the judge.

Given under my hand and the seal of said court at office in Jackson the 22d of March, 1860.

[SEAL.] JAS. L. TALBOT.

Bill of Exceptions.

In the Circuit Court of the United States for the District of West Tennessee.

ELIJAH CHEEK and others
vs.
JOHN OVERTON and others.

Be it remembered, that on this day of April, 1817, came on this cause to be tried before the Hon. West H. Humphreys, Judge, &c.; and a jury being empanelled, the plaintiffs' counsel read the injunction bond sued on in this behalf.

And thereon the plaintiffs' counsel introduced Mr. *Bellows* as a witness in the case, and requested the said witness to state the amount of travel and business passing across said defendants' ferry and plaintiffs' boat from Memphis to Mound City, and the amount of money which said plaintiffs could have made by the use of their said boat in carrying passengers, freight, &c., in said line of business, during the years 1851, '52, and '53, had they not been restrained by the injunction in the equity suit; also, the effect of said injunction upon the business of said plaintiffs at Mound City, their hotel, grocery store, &c., and the damages occasioned to the plaintiffs by said injunction in the premises.

To which question the defendants' counsel objected; but the honorable judge overruled said objection; and thereon said witness was permitted to depose, and did state and depose as follows, to wit:—

Lived in Memphis; kept a lumber yard on the landing foot of Adams Street; had a good opportunity. Moved in January, 1853, on the military road near Marion; no other public road; as much travel in 1852 as in 1851; had an opportunity of seeing the business; and from his best judgment the ferriage must have amounted,

January to April,	$60 per day.
April to August,	30 "
August to January,	125 "

About the same in '52 as '53.

Cross-Examined. Business place was about 300 yards from ferry, and saw wagons, &c., going on defendants' boat; crossed several times on defendants' boat; travel ceased about; was depending on the weather and rain; don't know anything about the expense of running a steam ferry-boat; thinks it would cost $15 dollars per day to run that boat; that boat was running, and there was a considerable travel all the time; never crossed unless there was considerable travel; crossed in August, and a number crossed; don't know that are certain seasons when the boat loses; have seen wagons crossing in the summer, as many as 1 per day; don't know the number of persons crossing at that season; I can't tell the number of wagons; don't know how many crossed in January, 1852; should think at least 10 or 15, maybe 20 per day; some days over 100 persons crossed, probably 150 per day, and considerable freight, cotton, game, groceries, &c.; can't remember the No. of bales; know that a good deal is shipped; can't tell how much, or what month it passed.

To all which the defendants' counsel objected.

Thereon the plaintiffs' counsel introduced *Mr. Spohr*, who deposed as follows, to wit:—

Lived in June, 1852, on the Military Road; lived there until the fall of 1854, right opposite Memphis, and kept a blacksmith shop. About $100 per day, during the fall, from September to January; about $25 per day from January to April. The ferriage of the plaintiffs must have been some $3 or $4 per day; finished the plank road in September or October, 1852.

Cross-Examined. Kept toll-gate opposite Memphis 10 Dec., 1852; remained there till Octo., 1853, when it was removed to the Mound; good deal of travel in July and August; $5 per day would not be an average during the summer; the travel would be $100 per day from September to January, $25 to April, $20 to September. Cost $15 to $20 per day to keep up lower ferry-boat, not so much to keep upper; don't know the cost of boats. Lives at Mound City. Not in his employ; not running at all in 1852. Boat was not running in 1852; was running in fall of 1851. Went in a buggy and back, and crossed at the lower ferry; in 1853 he did run, in summer of 1853, as a ferry, and don't know what he charged; his boat was at the landing at Mound City; did not use her as a ferry, but he may have used her running up and down the river; never engaged on boat; know he was not running her, and crossed on Jankins' boat; hands crossed often; more than 1 week to get liquor and other necessary things.

Plaintiffs here introduced Mr. W. B. Smith, who deposed as follows, to wit:—

I have been living near Memphis since 1842, except 10 months in 1848 on Arkansas side; I did not live on a public road till since Christmas; had opportunities to know amount of travel; my place of trading at Memphis; live 3 miles from the river, about a mile from highway travelled to and from Memphis; not much difference in travel in '52, '53, and '51; could not perceive any difference; Cheek's packet run to Mound City, 5 or 5½ miles from Memphis; persons crossing from Memphis have to go up the river to about 6 or 700 yards from Cheek's landing; would travel a little over 4 miles to opposite Cheek's landing; Military road takes off there, the only public road that takes off west; most of travel went on Cheek's boat; generally 1 hour to 3 hours nearer in time by Cheek's packet; road from point opposite Memphis till plank road was made in 1852 sometimes almost impassable; finished late in '52; road in ordinary condition; difference in favor of Cheek's road 1 hour time and travel of about 5 miles; Cheek had a small steamboat, and took wagons in a flatboat in tow when injunction was issued; should think much of larger proportion would take Cheek's route; from what I saw and knew, think two-thirds took Mound-City packet; result of my observation while Cheek's packet was running; 25 cts. for myself, 50 cts. for horse; always paid on boat till '53; for part of year I learned they were charging half-price; after that I paid half-price; confined to citizens of Shelby and Crittenden; travellers paid full price; think daily am't of travel from Sept. to January larger proportion of travel than any other portion of year, to $150; Jan'y, Febr'y, March, and April travel is much curtailed; travel about same from 1st Jan'y to 1st July, about $30 per day; July and August travel more extensive—$50; Cheek lived at Mound City; reputed owner of property '51 and '2; engaged in making plank-road from point opposite Memphis up Military road; finished a public in '51 or '52; had a wharf-boat previous to finishing his house; profits of house and wharf-boat seriously impaired by stopping his boat; kept groceries of different kinds on wharf-boat, and entertainment; good point for that business while boat was running; stoppage of his packet stopped his business entirely, because travel was turned away from that point; when travellers crossed on Cheek's packet, passed by his house; when packet was stopped, travel was turned away from that point; can't say what was the amount of his sales; bound to be a good point for business; don't know amount of stock on hand; I think they got a larger proportion of travel since injunction dissolved. No material difference in travel in different years; packet great convenience to public; public necessities required another packet. St. Cloud was boat injured; sunk at Mound City; laid up there; sunk I think in fall of '52; was bought for this trade; have no knowledge of cost of this boat. Moved to Arkansas Christmas '50, about mile from Military road; lived there till last winter; engaged in farming; went to Memphis 1, 2, or 3 three times a week. My habit in '51, '52, and part of '53 to July, crossed on Mound-City packet while it run, and then on other boat; was not running in '52; went over sometimes to sell produce; sold Cheek butter, eggs, corn, &c.; don't remember how often I was there; was making shingles at Mound City; noticed travel; then average 150 day in fall months; saw 10, 15, sometimes 20 wagons trip; generally about as many as boat could carry; saw last year 20 wagons at one trip. Mound City Belle makes 3 to 5 trips a day; St. Cloud made 3 trips a day; not so large as Belle; went often on St. Cloud; went on said Cloud twice in '52; don't know about the boat; went down in early part of year '52; boat went down for brick; have seen her at Mound City when she was tied up; saw her tied up first of '52; my impression is she sunk in latter part of '52; don't know her age or value; don't know expenses of running; from 50 to 75 or 80 wagons cross a day; average of horsemen I can't give; variety of freight going across; corn, bacon, &c.; always charged me for this freight; I paid $1 for wagon.

Smith re-examined. In January '52 went to Mound City to Memphis, and returned from Memphis to Mound City; I had started to Memphis; roads were bad; learned that boat was going, and went on board; in July I went in skiff to Memphis; when I got ready to go home I tied skiff to boat and went up.

Plaintiffs then introduced *Mr. Brown*, who deposed as follows, to wit:—

In years '51, '52, was acquainted with travel; lived in Memphis in '51; '53 moved to Arkansas; in '51 was passing frequently over the river; acquainted with travel from '50 up; crossed there often; every week; greater proportion travel Cheek's line; can't say exactly, but considerable; I would say at any rate ¼ or ⅕ more; Overton's Ferry goes right across the river; travel there takes Military Road up to within five hundred yards of Cheek's landing; Cheek was prepared to transport passengers when he was suspended; can't say exactly the time; he was suspended more than 1 year. In 1850 I entered a farm and worked some negroes, and was constantly passing and repassing; some weeks I didn't pass over; some passed three times; Cheek's boat was not running in March, '53; from time of injunction would not carry me; immense amount of travel from this side to Arkansas; good deal of travel from that side to this; amount of travel raises with the season; in the fall season very large; winter not so much, very little, comparatively; summer travel increases; all the crossing I would say $140 to 175 a day late in August to 1 January; from Jan'y to June, or middle of July, from 15 to 25 a $30 a day; July and August, 50 a 60; travel about same in succeeding years; in '52 a '53 at same seasons, travel was great; boat sunk at landing; was laid up after injunction and sunk; I am not much of a judge of the value boats; I offered him first $1500 for it, and on time, $2000; I suppose the boat to be worth that amount; at time of injunction Cheek was engaged in making plank road; had a tavern and store; kept accommodation for travellers, and supply of groceries; Cheek's boat landed in Memphis near foot of Adams street, which is between Jackson and Union; Overton's Ferry was in habit of landing between same streets; all Cheek's other operations at Mound City, except working on plank road, was suspended; his success in business I thought depended upon his running his boat; I knew Cheek's expenses to be trifling, but had no idea what it would be; did the most of business within himself; I did the most of my crossing on Cheek's boat while he was running; I always gained time and a great deal of labor; road from Mound City to opposite Memphis is very bad; was acquainted with the rate of tolls; my estimate is based upon that rate. Cross-examined. Live 7 miles from Cheek's; 3 miles from Military road; I see travel on the road when lived in Memphis. In year '51, think it was fall part of year, paid when I crossed; never counted wagons; carried on flat-boat somewhere 10 to 20; carried horses on boat; I know there were horses; I think about 4 trips a day; I won't be certain; I would say average 3 trips; I crossed once 125 negroes; must have been some 200 persons a day, for I have seen that cross at one trip; average 1st January to 1st July, 7 a 8 wagons a day, 40 passengers; July and August great deal of moving, and abundance of travel; don't recollect when boat sank; dont't know exactly time; think that it was in fall; doing nothing at all; every time I went up saw her; house was built in '52; think he landed there in fall; sank at Mound City in Feb'y, '53; I went to Mr. Cheek to get him to move her; he could not do it; after that she sunk; don't know how long after that before he got another boat; I never crossed on St. Cloud in '52; went down once in a skiff.

Plaintiffs then introduced Mr. Read, who deposed as follows, to wit: In 1851 when packet was enjoined was on boat; I came on boat in October; they were then carrying travel, and was on boat till she was stopped and stayed with him till 1852; I was with the boat when she sunk; the remainder of the time was at Mound City; was generally mate; can't say what was transported on both boats; suppose the lower boat got about ⅓ travel; daily travel amounted to something like $70 a day average; I kept an account for a few days, but have lost it; went on boat early in October; one day I received money, amounted to something over $90; this was more than average; generally 3 trips, some days made four trips; 16 wagons, 70 mules and some oxen was most I ever saw on boat; had accommodation for that number, and did carry that number in one trip; fall of '51 was a great deal of travel; the two boats, I think, were able to keep up the travel; don't think either of the boats engaged in trade could have done the business; after the boat was stopped in Dec. he did not transport passengers, he made a few trips for his own use; cost Cheek about $10 a day, 5 hands aboard generally is my recollection; I think wood would have cost $6, 3 other hands not included in $10 would have cost $3 a day, $1 each. Mr. Cheek was engaged in building plank road; had a wharf-boat; had a good many hands in his employment. I left in Aug. '51, and he told me he would a boat running for me to go on; when I came back Cheek was running St Cloud; was worth about $2,000; he landed part of time at foot of Adams Street; part of time at Navy Yard, between Union and

Jackson Streets; other boat landed near the foot of Union; generally had room for 12 wagons; Cheek had 2 flat-boats on the trips spoke of; they were about loaded; generally had but one.

Cross-examined. Was on boat from Oct. to Sept. Majority went to the bar and paid ferriage by purchasing cigars and liquor; about 8th Dec. Cheek was taken up to court-house, and came back said must not charge; took her up to Mound City; Thomas Cheek took boat and started up river; went up to and sometimes went jobbing; went up further and broke stand-pipe; about six weeks on that trip; few days afterwards I left her at Mound City; travel at fall season greater than at other seasons; 3 years old, small boat.

Re-examined. Wasn't so profitable to navigate to points; I think she was a White River boat.

Plaintiffs then introduced Mr. Richards, who deposed as follows, to wit: In '51 or '52, I lived some 6 or 7 miles from road; in Cheek's service portion of time '52, and little while in '53; commenced 1st day of November '52, in Feb. '53 quit; Mr. Cheek had to pay considerable ferriage as I suppose; had to pay ferriage more or less; had to have considerable freight carried across; had to go to lower ferry to go across; 5 miles from Mound City to ferry-landing. Was a great deal of travel in '52; can't say how much ferriage would amount to.

Cross-examined. St. Cloud was lying at landing while I was there; she was in good condition; troublesome to keep her off shore when water was falling; had hands at work on plank road; workmen on house; St. Cloud went down to Memphis once in Nov. '52; once I sent down for 3600 lbs. of pork; crossed at lower ferry; Cheek's family often started to Memphis; most commonly every day; don't recollect whether brought up brick or not.

Plaintiffs then introduced Mr. Minturn, who deposed as follows, to wit:—

Commenced living with Cheek last of Octo., '51; was on the boat frequently, passing to and from Memphis; boat did a very fair business; I would suppose about half went on Cheek's boat; I think the entire travel in two boats would am't to $140 or $150 a day; travel in spring considerably lighter; lived at Mound City till March or Feb'y, '53; from Jan'y to June, about $25 a day; July and August, $40 for both boats; travel about the same in '52; don't know when he resumed his trips; most of Cheek's crossing was done at lower ferry; had frequently to send to Memphis for materials; most of his crossing was done on Overton's boat; was engaged in building plank road; had a sawmill; was building houses; had a good many hands in his employ.

Cross-Examined. Went to Mound City last of October; was in sight of boat every landing; boat was running when I went; she ran to Dec.; went up Forked-Deer River; saw working on her pumping water out of her; went two trips to have her inspected; went after I left; went up Forked-Deer River in '52; brought down lumber and some cotton; went to Greenwich for some corn in '52; only trips I know of; can't say how often; have known him to bring up feed for cattle; been at work for Cheek since last Oct.; don't know when Cheek got a new boat.

Plaintiffs then introduced Mr. Malone, who deposed as follows:—

Travelled in Cheek's packet; made some half dozen trips; living in Memphis; was considerable travel; landing was generally crowded; don't know which boat did most business; when I crossed good many persons on board; been in Memphis since '46; don't know anything about travel in '52–3; suppose travel in '51 and last year all same, say $75 or $80 a day; was a pilot on this boat last fall; don't think there was much difference in '51.

Cross-Examined. I crossed over in fall of '51; paid money; didn't travel on that boat; travel in fall months larger than at any other season; about 4 times as much; I suppose would take in as much in fall months as all balance of year; cost about $20.

Plaintiffs then introduced *Mr. Clark*, who deposed as follows:—

Travel was greater in fall of '53 than '52; not much difference between '51 and '52; immense travel on that road.

Plaintiffs then introduced *Mr. Gooch*, who deposed as follows:—

Was living in '51, 2, 3, on the main passing used by travellers; think was more in '51 than '52; don't think was as much in '53 as in '51.

Plaintiffs then introduced Henry Brown, Esq., who deposed as follows, to wit:—

Myself and brother aided in the injunction suit, in connection with other counsel; suppose our charge was $500; think that would be reasonable; Mr. Swayne and Mr. Bankhead argued the cause at one term, and then was continued for re-argument, when we were employed; we have been paid.

To all which said evidence and each and every part thereof, the defendants' counsel at the time objected: because said evidence was vague and indefinite; because its tendency was to prove speculative damages or profits; because it was no legal or valid criterion from which to deduce damages; and because the fees of counsel in the equity suit were not recoverable by the plaintiffs either as costs or damages in this suit. But said objections were overruled by the court, and the said evidence permitted to go to the jury as aforesaid.

The defendants' counsel then moved the court to reject said evidence, and withdraw the same from the jury, for the reasons aforesaid; which motion the court overruled.

The plaintiffs then read in evidence the decree of the Supreme Court, marked Exhibit A; the agreement signed by defendant's counsel marked Exhibit B, and made parts of this bill of exceptions. Also Exhibit C, containing a deed by the Corporation of Memphis and others to Seth Wheatley, made part hereof. Also the award of Grace, Reese and Turley, between the Corporation of Memphis and others, as follows:

Whereas, an indenture made on the day of July, in the year 1844, between John S. Claybrook, executor of John Overton, deceased, John C. M'Lerude, by M. B. Winchester, agent and attorney in fact, the heirs and devisees of James Winchester by M. B. Winchester, special agent and attorney in fact, the legal representatives of William and George Winchester by M. B. Winchester, special agent and attorney in fact, Robertson Topp and William L. Vance, of the first part, and E. Hickman, Mayor of Memphis, for the Mayor and Aldermen of the town of Memphis, of the second part: it is, among other things in said indenture contained, and to which for fuller information and greater certainty reference is here made, set forth, and here made known, that divers questions heretofore arising between the said parties of the first and second part, and also between them and certain other persons in said indenture mentioned, and constituting the third party thereto, as to the ownership of the alluvial land formed by the Mississippi river on the western boundary of the tract of 5000 acres of land in Shelby County, Tennessee, granted by the State of North Carolina to John Rice by Grant No. 283, dated 25th of April, 1789; upon which said tract of land the town of Memphis was laid out, the said parties of the first part being the original proprietors of said town, or their representatives: And whereas, for the reasons, and upon the considerations in said indenture stated, certain of said questions were by the provisions and stipulations of said indenture, settled and adjusted between the parties to said indenture; and whereas, one of the questions connected with and arising out of said controversy, as to the ownership of the said alluvial land, to wit, the right to build wharves, and receive wharfage along the entire river limit of the town of Memphis; and was not, by the stipulations of said indenture, settled and determined between said parties of the first and second part; but, on the contrary was expressly reserved: And whereas, for the purpose of finally settling and determining said last-mentioned question, it was agreed in said indenture by the said first and second named parties, to submit the decision of the same to three jurists, to be selected by whomsoever should be Governor of the Commonwealth of Kentucky at the time. Either of said parties might present to said officer a copy of said indenture, and after such selection of said three jurists by said governor, the parties of the first part should fix the time and place for the arbitration, and give 60 days' notice thereof to the parties of the second part. And it was further by said indenture agreed, that said arbitration should determine which of said parties of the first and second part are, in law and equity, entitled to receive wharfage on the alluvial land aforesaid, allowing to both parties the full benefit of any legal advantage, as if it were a trial at law or in equity; and that their award should be binding and conclusive on the said parties. And whereas, upon the presentation to the said Governor of Kentucky of said indenture by the first named parties, be made a selection of arbitrators, and endorsed his acts of selection on said indenture in the words and figures following, to wit:—

"Executive Department, Frankfort, Kentucky, March 16th, 1846.

The foregoing indenture and agreement having been presented to me by the party thereto of the first part, for the selection of the arbitrators as therein authorized; I, William Ousley, Governor of Kentucky, accordingly select and appoint, as able jurists, the Hon. William B. Turley, William B. Reese and Nathan Green, Judges of the Supreme Court of the State of Tennessee, to arbitrate and determine the question, matters and things submitted by the parties in said indenture and agreement. In testimony whereof, I have hereunto set my hand, and caused the great seal of the State to be hereunto affixed. WM. OUSLEY."

And whereas, the undersigned, being the persons selected and appointed, having been duly notified of the selection and appointment, and having consented to perform the duties required in such selection and appointment as arbitrators; and, the said party of the first part having fixed the fifth Monday of November, in the year 1846, as the time, and the city of Nashville as the place of said arbitration; and having given 60 days' notice thereof to the parties of the second part: The undersigned, at the court-house in the city of Nashville, on the said 5th Monday in November, 1846, came together, attended by the counsel of the parties, and continued during the six following days—Sunday excepted—to hear fully the proof, exhibits and argument of the counsel on both sides, touching the questions submitted to them; and on said sixth, or last day, to wit, the first Monday of December, 1846, the hearing of said matter of controversy was concluded.

Now, therefore, we the undersigned, having taken all and singular the matter and things set forth, proved and argued upon both sides, into mature and deliberate consideration; do unanimously award and determine, that the mayor and aldermen of the town of Memphis, the party of the second part in said indenture, are entitled in law and equity to receive wharfage on the alluvial land, in the said indenture referred to and described, along the river limit of the town of Memphis, being the western boundary of said grant to John Rice, No. 283.

In testimony whereof of all which, the undersigned have hereunto set our hands and affixed our seals, the 8th January, in the year of our Lord one thousand eight hundred and forty-seven, 1847.

WM. B. TURLEY, [SEAL.]
WM. B. REESE, [SEAL.]
NATHAN GREEN. [SEAL.]

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Thereon, plaintiffs read in evidence the injunction bill and the amended answer in the suit in which the injunction bond here sued on was given. Also the report of the clerk and master in said suit made in the proceeding for contempt; and the affidavits of Jankins and Littlefield on which the same was founded, and the proof and affidavits taken by the complainants therein, in said equity suit, all which are as follows, to wit:—

Injunction Bill.

To the Hon. Wm. R. Harris, Judge of the Common Law and Chancery Court of the city of Memphis, sitting in Chancery at Memphis:—

The bill of complaint of Robert C. Brinckley, Robertson Topp, John D. Armour, and James Jankins, citizens of Shelby County, Tennessee, William L. Vance, a citizen of the State of Kentucky, John Overton, a citizen of the county of Davidson, and John S. Claybrook, a citizen of the county of Williamson, and State of Tennessee; humbly complaining, your orators would state to your honor, that John Overton, Sr , John C. McLemon, Marcus B. Winchester, and the heirs of James Winchester, William Winchester, George Winchester, devisees of William Winchester, deceased, being the owners in fee of thirteen hundred acres of land, part of a 5000 acre tract granted to John Rice, lying on the east bank of the Mississippi river, in the county of Shelby, including the mouth of Wolf river, and running down the river eastwardly for complement, and embracing all the soil from the mouth of Wolf river to the southern limit of the town of Memphis on the bank of the Miss. river, applied to the County Court of Shelby County, Tennessee, at its April term, 1829, for grant of the privilege of establishing and erecting and keeping a public ferry across the Mississippi river, at a point below the mouth of Wolf river, and within the corporate limits of the town of Memphis. Said petition was resisted by the mayor and aldermen of the town of Memphis, and the said County Court refused to grant to the petitioners said privilege. From the judgment of the County Court an appeal was taken by the petitioners to the Circuit Court of Shelby County; when at the term of said court, the decision of the County Court was reversed, and the privilege asked by said petitioners to erect and keep said ferry was granted to them; from the judgment of the Circuit Court aforesaid, the said mayor and aldermen of the town of Memphis prayed and obtained an appeal to the Supreme Court at Jackson; and at the May term, 1832, of said Supreme Court, said judgment was affirmed, and the grant of the privilege of erecting and keeping said public ferry was fully and completely and exclusively made and vested in said petitioners.

Your orators would further state, that immediately after said grant was thus vested in said petitioners, and in the year 1832, or thereabouts, the said petitioners did establish and erect a public ferry across the Mississippi River, with a landing place on the east bank of the Miss. River, within the corporate limits of the town of Memphis; and that they and their assigns, devisees and heirs, from that time to the present time, continued to keep said ferry, and owned and claimed the exclusive right to keep the same in exclusion of all others; that the same has been kept *bona fide* and in good and sufficient order for public use, to the present time; that the same has been kept up at great and constant expense and hazard, and is now being kept up at great expense, and with good and sufficient boats, and in good and sufficient order.

Your orators would further state to your honor, that the said John Overton has departed this life; that several of the other petitioners have sold and conveyed all their interest in said soil and in the said ferry; and that now the soil on the bank of said river, where said ferry is erected, and within the corporate limits of the town of Memphis, and the privilege of said keeping said ferry, are vested in your orators, Brinkley, Topp, Winchester, Vance, Overton, and Claybrook; that they have leased the same to your orator James Jankins, who is at the present time the lessee of said ferry, and is keeping up and attending to the same at a very heavy expense.

Further complaining, your orators would show to your honor, that certain persons under the name and firm of George W. Cheek & Co., with intent to injure the complainants, and to deprive them of the enjoyment of said ferry, and the emoluments arising from the grant of said privilege, have recently, and without any authority from the County Court of Shelby County, and without application thereto, erected and established another ferry across the Miss. River, having for the place of landing on the Tennessee bank of said river, a point within the corporate limits of the town of Memphis, and within 4 or 500 yards of the landing-place of the ferry of complainants.

Your orators state, that for the purpose of evading the law, the said parties pretend that they have not erected a ferry; but that they have established a packet from the town of Memphis to a point in the State of Arkansas, on the Miss. River, and that they are entitled so to do.

Your orators state, that this is nothing but an attempt to evade the law, and enact a fraud upon it. That the said pretended packet makes its trips up to the said point on the opposite side of the river, a distance of about 5 miles, simply as a ferry packet. That at the point where it lands, on the west bank, there is no town or business of any kind carried on; that, although designated as Mound City, there is but one house in sight of said landing on said Arkansas shore; that the said parties charge only the same rates as are chargeable at the ferry of complainants, and have put out their advertisements to that effect, which will be seen by reference to the same hereunto filed, marked A, and prayed to be made a part of this bill. Your orators will state, as appears from said advertisement, that the road from Memphis through Arkansas runs along the Miss. River, and at the point where said pretended packet lands the said road is distant not more than 15 or 20 paces. Your orators further state, that the only business pretended to be done by said packet is the ferrying business; that the said parties have their runners out in every direction, and on every road of importance, to notify travellers and emigrants of their packet, and to get them to travel on the river on the same.

Your orators state, that this is entirely destructive of their grant or privilege almost; that it is injuring very greatly the said Jankins, and taking largely from his just emoluments; and that said parties will, as long as the travelling and moving season lasts, keep up their said ferriage while it can be profitable; and then discontinue the same, and to leave your orators compelled to go on and keep up the ferry during the whole time.

Your orators further state to your honor, that they do not know who compose the firm of George W. Cheek & Co., but they believe and charge that the same is composed of said George W. Cheek, Elijah Cheek, and John Cheek, R. L. Kay, S. B. Curtis, A. G. Knapp, Alexander J. White, of the firm of Kay, White, Curtis and Knapp, and E. H. Porter, who, as your orators are informed, are interested in said project, and are connected with said and are instrumental in getting up and running said packet.

All which actings and doings are contrary to equity, and tend to the injury of your orators. In consideration whereof, and inasmuch as your orators are remediless, save in this court, your orators pray your honor that the said George W. Cheek, Elijah Cheek, R. L. Kay, Alexander J. White, S. B. Curtis, A. G. Knapp, and E. H. Porter, who are citizens of said county of Shelby, and other persons not now known, who may be found to be interested in said packet, be made defendants hereto, and that they be made to answer this bill on their respective corporal oaths, fully and completely and specifically; that writs of subpœna issue, &c.; and that writs of injunction enjoining and restraining the said parties, and each and every one of them, their agents, servants, and attorneys, and enjoining and restraining every other person or persons whomsoever, from running said packet, or pretended packet, from Memphis to Mound City, or to any other point on the Arkansas side of the Mississippi River, at or near the town of Memphis, from a point or points within the corporate limits of Memphis; and that the said parties, and each of them, and every other person, be restrained from trespassing by said pretended packet, or any otherwise, or by any other packet, or any person or persons, or their effects, for pay, across the Miss. River within 10 miles of the ferry of your orators, and from diverting the travel from the ferry of your orators. Your orators pray such other and further relief as may seem meet and proper, and to equity belongs; and as in duty bound, they will ever pray, &c.

WRIGHT & JUGA, for Complainants.

State of Tennessee, Shelby County.

Personally appeared before me, James Rose, an acting Justice of the Peace in and for said county, James Jankins, one of the complainants to the within and foregoing bill of complaint, who made oath that the matters and things therein stated, as of his own knowledge, are true; and such as are stated as on information of others, he believes to be true. JAMES JANKINS.

Sworn to and subscribed before me this 24th Sept. 1851.
JAMES ROSE, J. P.

Fiat. To the clerk and master of the Chancery Court at Memphis, Tenn. Let writs of subpœna and injunction issue, as prayed for in the foregoing bill, on complainants giving security for costs according to law; and a further bond with sufficient securities in the sum of ten thousand dollars, conditioned to pay the defendants, and each of them, all such damages as they, or either of them, may sustain by reason of wrongfully suing out said injunction, this 25th Sept. 1851.
J. C. HUMPHREYS, [SEAL.]
Judge, &c.

The amended answer of George W. Cheek, Elijah Cheek, and William Cheek, to the bill of complaint of R. C. Brinckley, Robertson Topp, and others, filed in the Common Law and Chancery Court of the city of Memphis, chancery side of said court. To the hon. Wm. R. Harris, Chancellor, &c.

Respondents, now and at all times reserving to themselves all manner of exception to the many errors and uncertainties in the said bill contained, for further answer thereto, or so much thereof, &c., answering says: That since the filing of their said answer, both of which, with the endorsements thereon, fiat, affidavits, &c., all here now particularly referred to and shown to the court as on file in the said court: They, Elijah Cheek, and George W. Cheek, respondents, in order to remove any doubts, or supposed legal difficulties about the running of their said packet between the said city of Memphis and Mound City, for the purposes stated by respondents, and the transportation of travellers, emigrants, horses, wagons, goods, wares and merchandise, &c., for pay; did, according to the statute in such cases made and provided, apply to the County Court of Shelby Co., Tennessee, at its October term, 1851, for a license to keep a public ferry between the said points; and the said court did in proper form, after hearing proof for and against the said application, and mature deliberation thereon, appoint, settle, and establish a public ferry between the said points, and granted to respondents the right to keep the same, establishing the rates thereof, and taking from respondents all necessary bonds in and about the same. Respondents charge that complainants were parties to said suit and proceeding, and defended the same by their counsel in court; that the order and judgment of said court, though appealed from by complainants, stands annexed, a copy of which will be produced on the hearing of this cause, or sooner if required. Respondents pray, that the benefits of said order or judgment may be allowed to them in this cause in addition to the rights and privileges before belonging to respondents in the premises, and they charge, in their opinion they are entitled to the same, because they say the said franchise being legally granted to them, the court cannot make perpetual the injunction obtained in this cause, restraining them from running the said packet, &c.; and because the said grant puts beyond dispute their right to run the said boat or packet for the purposes charged and to receive pay. And respondents so insist further, because the said complainants in their said bill have especially charged and complained, that the said respondents had no license.

Respondents further charge more explicitly than they have before done, that compl's themselves have no license to keep their said pretended ferry; that the same was never granted to them, or their assignees, or testators, or to any other person by the said County Court of Shelby County, or any other tribunal having the power to do the same; that the franchise thereof still is in the State and is not barred in compl's favor by the statute of limitations, and that the soil on the bank of the Miss. River does not belong to said compl's, and was always vested in the corporation of Memphis from the laying out of said town; so that the said complainants, nor others under whom they pretend to claim, have not, nor had not a preference right to their said ferry, and are wrongfully enjoying the same. Respondents further show that if complainants ever had a license to keep their said ferry, the same did not apply to their present locality occupied by them; and that their said ferry at the point or points in said corporation where it now is, and for many years has been kept, more than seven last past, is without authority entirely; so that the said complainants, in fact, are keeping a ferry without license, and without right in and to the soil, and have no cause or right to complain of respondents as they have here done in this cause. From all this it will appear unto your honor, if respondents be not mistaken herein, that said complainants cannot succeed in their said appeal taken by them as heretofore stated, and should not; and hence they pray this honorable court to dissolve the said injunction.

Respondents deny that complainants are or could be vested with any exclusive right under the statutes of Tennessee, and say that the just and liberal spirit and letter thereof warrant no such assumption on the part of the complainants. They state that they are the owners of the soil at Mound City, having paid a large sum of money therefor, and at great expense a town, by-streets and alleys and improving the same; that it is likely to become an important point on account of trade and travel, and its communication with the city of Memphis. Lots are already in great demand, but have not been offered for sale. Respondents therefore state that they will be greatly injured should this court make perpetual the injunction herein obtained. They are informed and believe that the citizens of Crittenden County, Ark., or a majority of them, are in favor of removing the county seat of said county to Mound City, and that the same will be done so soon as it is legally practicable; that such removal will be necessary for the convenience and advantage of the citizens of said county. Said town of Marion being a low, wet place, and not suitable for a town. In view thereof, and to promote commerce, and facilitate communication between Memphis and said Mound City, respondents say they ought not to be enjoined according to the prayer of said bill. Respondents state that they are the principal owners, or some of them, of the stock in the Memphis and St. Francis Plank Road Company, and the said boat is almost, or quite, indispensable to the construction of said road; that they are building and superintending the building of said road; that all the region of county back of and about Mound City is rapidly settling and growing in importance and trade, and since the levying system has been adopted by the State of Arkansas, it will more rapidly settle and grow, and consequently demands by its wants and necessities, and must continue to demand in a great degree the facility of the said packet in reaching the market of Memphis without the land travel of five additional miles, the tollage of said road for that distance, and their ferriage opposite Memphis, which last is equal to the rates allowed respondents by law for the whole distance to Mound City. Large quantities of timber, stock, and products of the soil, which is unsurpassed in capacity and fertility, require the facility of said packet to be brought to said market; besides the necessary travel, other freight and merchandise passing to and from Memphis; all of which must be otherwise subjected to the said five miles further land travel, the said tollage thereon, and ferriage as stated.

Respondents state that there is a produce store at said Mound City for the public convenience; that they have made, and are at this time making, extensive preparations for building, not less than from 50 to 75 dollars per day being paid out for hands engaged in improvement and labor. Also is shown to your honor the office of president of the Memphis and St. Francis Plank-road Company is kept at said Mound City; erected there also are a commodious stable, blacksmith's shop, wagon-making shop, dwelling-house and tavern; also two extensive saw-mills adjacent, built by respondents at great expense to aid in building up said town, and in the construction of said road. Also a large and commodious wharf-boat done, and ready to do a large commission and other business, and to accommodate travellers and boarders. The loss of all these must fall on respondents, and they will sustain great loss if compelled ultimately to suspend their said packet, and the public will be greatly inconvenienced, and commerce burthened and retarded between Memphis, Mound City, and county back thereof.

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The right of respondents to ferry privileges at said Mound City, will be established by the authorities of Arkansas, and only await the supply of to perfect it, as they are advised. A public road of long standing approaches the river at that point, and will be noticed as such by your honor; being entitled to ferry privileges in Arkansas, respondents charge that they have the right, by constitutional law, to land at Memphis; but if they have not, nor had a license from the courts of Tennessee, still they say, that as a packet they have the right so to do as other packets, and that commercial comity requires that it be recognized by the courts of Tennessee.

And respondents further insist and charge that by an act of 1813, of Tennessee, they have the right to use the very ferry landing of complainants, if they have any, for loading and unloading the said packet if they so desire, thereby not obstructing complainants in their said ferry (if such they lawfully have), without regard to the description or character of the cargo on said packet. And respondents further charge, that by an act of assembly, they may keep a private ferry within less than two miles of complainants' ferry, subject to the rules and regulations of public ferries; the road leading to said Mound City being a public road, crossing the river at and from said point to said city of Memphis, and that as such, the same is recognized by the Legislature of Tennessee, in which the franchise is primarily inserted.

Respondents are informed and believe, that compl't R. C. Brinkley, before the bringing of this suit, and who was absent when the bill was filed, had sold his interest, or most of it, in the ferry claimed by complainants, to other persons not before the court, and that other parties in interest besides (one or more) are also not before the court, without whom a decree cannot be binding in this cause. Respondents charge, that in either case, whether as a packet or a ferry-boat, they have the right, as heretofore shown, and ought to be allowed to run the same for pay, without interference from said complainants, by their proceedings herein they have wrongfully practised—obtaining from a circuit judge.

They state, that by reason of the premises, they have been, and are greatly injured, as well as by a supersedeas at law, obtained by them after their appeal aforesaid, restraining the exercise of their grant aforesaid from the County Court aforesaid, who were and are the proper judges of the public will and convenience in the premises, as declared by the supreme judicial tribunal of the State. And respondents show unto your honor, that by reason of the premises they are now suffering greatly, and unless permitted by this hon. court to receive pay, they must needs suffer greatly more; together with all their interests hereinbefore shown to your honor; that because of the said injunction and the said supersedeas (if the former be in force since the grant to them as aforesaid), they are prevented having their reasonable and just emoluments and profits for transporting as aforesaid, between the said points of Memphis and Mound City.

Respondents pray that under terms and conditions to be prescribed by this court, they be permitted to run their said packet, receiving pay therefor, without let or hindrance from complainants, on account of their said supersedeas and said injunction, until the final hearing of this cause, and determination of the rights of parties by your honor thereon. Respondents pray the benefit of demurrer, as fully as though the causes thereof were stated. They show to your honor, that they, respondents, are non-residents, except respondent Elijah Cheek; that they are partners—that their interests are identical; and he, the said Elijah Cheek, is the active business member of the said firm, with full powers to act for them.

Respondents pray, that complainants' bill be dismissed and the injunction dissolved; and, having fully answered, may they be hence dismissed with their reasonable costs, &c.

J. T. SWAYNE, for Defendants.

State of Tennessee, Shelby County.

Personally appeared before me, James M. Williamson, clerk and master of the Chancery Court at Memphis (Common Law and Chancery Court of the city of Memphis), chancery side thereof, Elijah Cheek, one of the respondents in the foregoing answer, and made oath that the facts therein stated of his own knowledge are true, and those stated on information of others he believes to be true.

E. CHEEK.

Sworn to and subscribed before me this 29th day of November, 1851. JAS. M. WILLIAMSON, C. & M.

Endorsed: Filed Dec. 1st, 1851.

JAS. M. WILLIAMSON, C. & M.

By order of the court.

Report of the Clerk and Master.

Filed January 24th, 1852.

The clerk and master, in pursuance of regular notice served upon the parties, proceeded on this the 21st day of January, and in the presence of counsel on both sides, to take proof preparatory to taking and stating the account, as ordered in this case at the last November term of the Common Law and Chancery Court of the city of Memphis, on the equity side. The clerk and master continued to take proof from day to day to the evening of the 24th, which will be found appended hereto as a part of this account; when the testimony on both sides closed, and the clerk and master proceeded thereupon to the following report and statement of account.

To ascertain the loss which the complainants had sustained, proof was introduced showing that defendants had kept and run an opposition ferry-boat, or boats, from the latter part of September, 1851, to the 12th December, 1851; that they carried passengers, money, wagons, freights, stock, horses, mules, and all such articles and things as are usually ferried across the Mississippi River at Memphis by the regular ferry-boat; that they continued to run and make their regular trips up to and including the 12th December, 1851.

Calvin A. Littlefield proved that the defendants ran the ferry-boat for 3 days previous to the 29th of September, and that they did a better business (three times as much) than they did for the three first days following the 29th of September, including the 29th. It appeared also from the testimony of the said Littlefield, that he was employed by complainant Jankins to keep a regular account of all the freights, persons, wagons, horses, stock, and all other things upon which ferriage was chargeable, which the defendants carried on their boat or boats every trip they made, either up or down, from the said 29th September, 1851, inclusive, by the defendants during the time they kept up their ferry; and that he did keep an account as set forth in the books marked (A) and (B) made exhibits to his deposition, of each trip of the boats of the defendants; with every article set down upon which ferriage was chargeable carried by the said boats; that he was on the spot every time the boat came in, and every time she departed, except one day and part of another—when Mr. Haney kept the account—whose deposition is also on file. That the various items making up said account kept by witness, Littlefield, are correct; and that the articles therein charged were carried by the defendants, has not been controverted.

The rates charged have been also shown to be the usual and customary rates. The defendants are therefore held chargeable therewith as set out in the books "A" and "B" of Littlefield's deposition, subject to such corrections as may appear on the face of the account, with interest from the day of each day's transaction to this date; to be credited herein, with such offsets, or allowances, or deductions as the defendants may prove; which account will stand as follows:—

George W. Cheek, Elijah Cheek, et al., defendants, Dr.,
To James Jankins.

To the several amounts of ferriage hereto following, charged in account book "A" of witness Littlefield, with interest from each day's transaction to 11th December, 1851.

1851,	Octo.	21.	Am't of ferriage	$19	45.	Interest	16¢	for 50	days.
"	"	22.	"	11	75	"	10	" 49	"
"	"	23.	"	32	90	"	27	" 48	"
"	"	25.	"	24	78	"	19	" 46	"
"	"	27.	"	90	15	"	66	" 44	"
"	Sept.	29.	"	11	95	"	18	" 72	"
"	"	30.	"	25	85	"	32	" 71	"
"	Octo.	1.	"	26	35	"	30	" 70	"
"	"	2.	"	42	60	"	49	" 69	"
"	"	3.	"	61	05	"	69	" 68	"
"	"	4.	"	40	90	"	47	" 67	"

that she carried, to his knowledge, a great deal more on those days —though he kept no account of it, not being then employed to do so.

The first three days of his account amount to	$64.05
Double that amount, which would then be a low average for any other three days in October, would be	128.20
Interest to date,	2.50
	$130.75

Which amount must be added to the above account and interest with which the defendants are chargeable.

The defendants are entitled to a credit for the transportation of a steam-boiler, 4 oxen, and 2 wheels, known to belong to defendants by witness Littlefield; also the ferriage over and return of carriage, which we know, or was informed, was the property of, or in the use of defendants, which he states are charged in his account.

The clerk and master next went into an examination of the proof offered by defendants, and is compelled to report the same vague and unsatisfactory. The undersigned thinks that the defendants would be entitled to a credit for such freight as was fairly carried for their own proper use, and on their own account, and also for such persons as they carried over in their own immediate service and employ; but then, this must be clearly and distinctly proven; it must not be a matter of surmise and inference.

Witness Douglass states the amount of freight carried of the own goods of defendants, would average from $5 to $8.00 per day, during the time he was pilot, from the 6th of October to the 26th; he states, in his examination in chief, he was levee clerk, and that the freight of defendants would be *about* $8.00 per day. This is stated as the average for that time.

The undersigned went into an examination of all the freight charged in the account of S. Littlefield, and made out an estimate with a view of making an average of the amount charged in his account for freights alone, going through his accounts entire, item by item; and the undersigned ascertained that the entire freight charged, would not average for each day of the whole account, more than $1.51 per day; and during the time referred to by witness Douglass, he thinks a less amount. The undersigned, therefore, is driven to one of the two inferences, either that the witness was greatly mistaken as to his statement about the freight carried for defendants' use, or that defendants were not charged with it by Mr. Littlefield.

Witness Ellison states it more distinctly and positively at $10.00 per day, as a fair average for the freight carried for the proper use of defendants and on their own account, and for their own individual purposes, from the 11th Nov. to the 15th December, 1851—the period during which he was pilot. The same reasoning applies to his testimony; he either proves nothing, or proves an amount with which defendants have not been charged.

Next, as to the persons said to have been carried over by defendants in his employ or service, witness Douglass says: "The passengers in the employ of the defendants, and persons going on a pleasure excursion, would average $10 per trip." Here, he mixes the persons in the employ of defendants, with pleasure passengers, and the undersigned cannot serve them; he thinks the pleasure passengers were properly charged as other persons in the account of witness, Littlefield. On the cross-examination, Mr. Douglass admits, "he does not know how many persons Mr. Cheek had in his employ, who travelled on the boat;" 10 each trip would be certainly too many to set down as in the service of defendants. The whole number crossing, as charged in the account, would not greatly that as an average during the time spoken of by the witness. Witness Ellison states the number of carried over when he was pilot, in the employment of defendants, to be from 7 to 10; but, upon the cross-examination, he leaves the whole matter in doubt, by stating "that he does not know, of his own knowledge, that the laboring men spoken of were in the employment of Mr. Cheek. The undersigned does not think defendants entitled to a credit for carrying M'Namee's men.

From the testimony of witness Read, who follows, it would seem that the inference might clearly be made, they were "Mr. Namee's men;" he states, "Macknamee took a sub-contract under Mr. Cheek, and it was agreed in the contract that defendant Cheek was to carry the hands of the said Macknamee, and his freight free of charge." *That*, he might agree to do; but he could not expect complain't Jankins, who was not a party to the contract, to do so, or, what would be tantamount, lose so much ferriage.

The undersigned has no doubt the defendants have found their own hands and persons in their service and employ frequently; but then they must prove it as distinctly as the compl't his account, to be entitled to a credit, or a deduction for so much. The undersigned thinks the amount proven up by complainants correct, except that on summing it up, the additions overrun the amounts exhibited by witness Littlefield, and must be taken as a fair measure of the loss of complainants, in their business of ferrying by the interference of defendants.

Witness Read states, on behalf of defendants, he kept an account of the ferriage charges which were made on the other side of the river, or which might have been made by the defendants, at their landing in Arkansas, on all articles coming this way; and, as far as examined, corroborates the correctness of witness Littlefield. This account was from the 17th to 27th November.

Further testimony was gone into by the witnesses for the complainants, to show what other damage the complainants had sustained, besides the loss of the ferriages, which have been summed and proven above. Witness Shaw places the damage at $300. Witness Littlefield, at $600. They included, however, estimates of expenditure with which defendants are clearly not chargeable, viz., the expenses and damages sustained by complainants resisting applications of defendants for ferry privileges at Raleigh and at Marion. The undersigned, however, inclines to the opinion, that all other consequential damages and losses which happened to complainants, and also expenses growing out of the wrong-doing of the defendants, are properly chargeable to them, viz., the employment of Mr. Spain to attend to the boat of compl't Jankins, the employment of Littlefield to keep an account of the ferriages of the defendants to enable him to ascertain the extent of the injury done him, his loss of time in litigating with defendants in maintaining his rights—that is to say, in prosecuting this suit—it will be for the court to say whether these will be allowed.

Mr. Spain, at $50 a month, 3 months, $150 00.

Mr. Littlefield, at $3 per day, 72 days, 216 00.

Expenses, loss of time, &c.

Injury to the good name of complainant's ferry by reason of the interference of defendants.

The defendants have been charged with interest on each day's transaction, which will be all the legal compensation complainants can recover for being kept out of their money. The clerk and master was of opinion, that all persons carried by defendants for nothing, was so much loss to complainants; and, therefore, properly entered into the account of Littlefield.

The clerk and master has also charged the defendants with all the ferriage done by them during the entire period they were running—considering them as wrongdoing all the time, and running without proper authority, and abstracting so much from the business of complainants, and occasioning so much loss and damage to them.

All of which is respectfully submitted.

JAS. M. WILLIAMSON, C. & M.

"Affidavit of Jankins."

ROBERT C. BRINKLEY, R. TOPP et als.
vs.
G. W. CHEEK et als.

James Jankins, one of the complainants in the above cause, now on the chancery side of the Common Law and Chancery Court of the city of Memphis, makes oath, that on the 26th day of September, 1851, the complainants filed their bill in the office of the clerk and master of said court, on the chancery side thereof, at the city of Memphis, in the State of Tennessee, against George W. Cheek, Elijah Cheek, William F. Cheek, John Cheek, R. L. Kay, Alexander J. White, S. B. Curtis, W. G. Knapp, and E. H. Porter, and against all other persons not then known, but who might be found interested in the illegal acts of the defendants, as hereinafter detailed: in which bill the complainants set up and alleged, as they now do, the exclusive and sole right to have, to hold, keep, and run a public ferry across the Miss. River at the city of Memphis and within the corporate limits thereof; and to receive and take to themselves the full profits and gains of said ferry free of let or hindrance by any one; and further alleging, that said defendants, under the name and firm of George W. Cheek & Co., with intent to injure the complainants and to deprive them of the enjoyment of said ferry and the emoluments accruing from the grant of said privilege, have recently, and without any legal authority, erected and established another ferry across the Miss. River—having for their place of landing, on the Tennessee bank of said river, a point within the corporate limits of the town of Memphis, and within 4 or 500 yards of the landing-place of the ferry of complainants; and praying, among other things, that a writ of injunction issue, enjoining and restraining said defendants, and each and every one of them, their agents, servants, and attorneys, and enjoining and restraining every other person or persons whomsoever from running their packet, or pretended packet, or boat, from Memphis to Mound City, or any other point on the Arkansas side of said river at or near the town of Memphis, from a point or points within the corporate limits of the town of Memphis; and that the said parties defendants and each of them, and any other person, be restrained and enjoined from transporting by said pretended packet, or any otherwise, or by any other packet, any other person or persons, or their effects, for pay across the said Miss. River within 10 miles of the ferry of complainants. That, before the filing of the said bill as aforesaid, the same being duly sworn to, and the affidavit of affiant to the truth thereof attached, was presented to the Hon'ble Jno. C. Humphreys, one of the Circuit judges in and for the State of Tennessee; and that the said John C. Humphreys, being such judge, did on the 25th day of September, 1851, make his fiat and order upon said bill directed to the said clerk and master to issue a writ of injunction, as prayed for in said bill, on complainants giving security for costs according to law, and a further bond with securities in the sum of ten thousand dollars, conditioned to pay the defendants, and each of them, all such damages as they or either of them might sustain by reason of wrongfully suing out said injunction; that a bond and security for costs, and a farther bond, with ample security for damages, was given and filed by complainants before and in the office of the clerk and master, as required by said fiat; and that afterwards a writ of subpœna, with a copy of said bill, and a writ of injunction as prayed for in said bill, was ordered and warranted by said fiat, was duly and regularly issued, as affiant is informed and believes, by and from the office of the said clerk and master, and were placed for service and execution in the hands of the sheriff of Shelby County, Tennessee, who duly served and executed the same upon the said defendants on the 30th day of September, 1851; and from thence the contents of said bill, the said fiat and injunction became fully known to the said defendants. All of which, with the allegations of said bill and the prayer thereof, will more fully and at large appear by reference to the records of this honorable court in this cause. That the said R. L. Kay, Alex. J. White, S. B. Curtis, A. G. Knapp, and E. H. Porter filed an answer to said bill, in which they deny and disclaim any interest or connection in the firm of Geo. W. Cheek & Co., or in running said rival ferry; and that the said George W. Cheek, Elijah Cheek, and Wm. H. Cheek on the 29th day of September, 1851, filed their answer to said bill, averring that they composed said firm of Geo. W. Cheek & Co., and that they had been and were running the packet or boat from Memphis to Mound City, and transporting passengers, travellers, stock, &c., and notwithstanding the well established and exclusive rights of complainants to their ferry as aforesaid, the said Geo. W. Cheek & Co. illegally insisted upon running their said pretended packet, or boat, which, your affiant states, is nothing but a rival ferry intended to break down and destroy the value, profits, and gain of the ferry of complainants. Affiant further states that, at the time of the filing of said bill, and ever since, he had and still holds the ferry of said complainants, under a lease from the owners thereof; and that he kept the same up, and is now keeping the same up, at much and great outlay and expense to himself, and is entitled to all the gains, fees, and profits of said ferry made and acquired, or which it would have made or acquired but for the illegal acts and intermeddlings of the said George W., Elijah, and Wm. F. Cheek, their servants and agents, at any time since his lease; and that they, the said George W., Elijah, and Wm. F. Cheek, are liable to him for all such fees, profits, or emoluments, as they have thus illegally deprived him.

Affiant now further states, that notwithstanding the just rights of complainants, as set forth and shown in the bill aforesaid; and notwithstanding the fiat of the judge, and the injunction issued and served as aforesaid; and notwithstanding said George W., Elijah and Wm. F. Cheek had full and actual notice of said bill, fiat and injunction, and knew that they had no right to evade and recite the same; and yet, that they, the said George W., Elijah and Wm. F., disregarding said writ of injunction and its mandates and restraints, and diregarding the rights of complainants in said bill, and the authority of law, and the power of this honorable court, have, in contempt thereof and of all of them, continued from the 29th day of September, 1851, to the present time, to run from the city of Memphis, and from a point within the corporate limits of the same to said Mound City in the State of Arkansas, the very same boat, or pretended packet which they were running at the time of the issuance and service of said injunction; together occasionally with an additional boat; and to carry and transport passengers, stock, &c., in all things like a ferry-boat, and in the same way as they did before the issuance and service of said injunction, from the said city of

Memphis and the corporate limits thereof, across the said Miss. river to the Arkansas side of said river; and are still engaged in running said rival ferry-boat, and in transporting passengers, travellers, persons, stock, &c., across the said Miss. river at Memphis, from a point in said city to the opposite shore; and in illegally and wrongfully, in violation of said bill, and the said injunction issued thereon, diverting the travel and travellers, and the stock, &c., by various false acts, from the ferry of complainants; whereby the ferry of complainants has become of greatly inferior value, and whereby affiant has lost in the fees and emoluments of his ferry since the said 29th Sept., 1851, the sum of $4,723; as will appear by the account and affidavit of Calvin A. Littlefield, showing the amounts made and given by said George W., Elijah and Wm. F. in running their said pretended ferry; and all of which travel, passengers, stock, &c., affiant doth verily believe was diverted from complainants' ferry and lost to it by the illegal devices and acts of said George W., Elijah and Wm. F., and their illegal ferry; who, affiant is informed and believes, have repeatedly declared since the service of said injunction, that they intended to continue to run their ferry until put in jail for it.

Affiant therefore, on behalf of himself and the other complainants, prays that a rule be made on said George W., Elijah and Wm. F. Cheek, requiring them to appear at a given day, during the term of this court, and show cause why they shall not stand committed to the common jail of Shelby County for the contempt aforesaid; and be fined, and decreed to pay affiant the said sum of $4,723, of which they have so deprived him; or that this honorable court will make such other and further order in the premises as shall be consistent with its practice in such cases; so as to fully protect the rights of complainants, and maintain the authority of the law and the court; and as in duty bound, will ever pray, &c. JAMES JANKINS.

Sworn to and subscribed before me in open court this 2d Dec., 1851. A. J. McLEMON, D. C. and M.

Endorsed: Filed Dec. 2d, 1851.

A. J. McLEMON, D. C. and M.

Affidavit of Calvin A. Littlefield.

In the above cause now pending in the chancery side of the Common Law and Chancery Court of the City of Memphis, Calvin A. Littlefield makes oath: That he has read the affidavit of James Jankins in the same cause, and believes the same to be true; that affiant knows personally that the said George W. Cheek, Elijah Cheek, and Wm. F. Cheek, have continued since the 29th of September, 1851, as they did before, to run their ferry-boat, and to transport travellers, passengers, stock, &c., across the Mississippi river at Memphis, from a point or points within the corporate limits of said city, to the Arkansas shore at Mound City, for compensation and profit; and that they are now engaged in so doing, to the great injury and ruin of complainants' ferry; thereby diverting from complainants' ferry greatly more than half the travel across said river at said city. That the said Jankins, on the 29th day of September, 1851, engaged this affiant to keep an account of the travellers, wagons, passengers, teams, stock, &c., taken and diverted from complainants' ferry, and conveyed across said river at Memphis aforesaid from the Tennessee side of said river, by the said George W. Cheek, Elijah and William Cheek; and that affiant did from day to day, for the period aforesaid, to the present time, keep an account of the same; whereby they, the said George W. Cheek, Elijah and Wm. F. Cheek, at the same rate of toll of complainants' ferry, have made the enormous sum of $4,753, from the said 29th of September, 1851, to the present time. All which, affiant feels well assured was diverted by the said George W., Elijah and Wm. F. Cheek, and their ferry from that of complainants; and is so much loss to the said Jankins, the lessee of complainants' ferry.

C. A. LITTLEFIELD.

Sworn to before me in open court, Dec. 2d, 1851.

A. J. McLEMON, D. C. and M.

Affidavit of Curtis C. Robbins.

Curtis C. Robbins, of the city of Memphis, Tenn., of lawful age, makes oath, that he has frequently since the filing of complainants' bill and issuance of the injunction in said cause, to wit, the 26th of September, 1851, crossed the Miss. river from Memphis, Tenn., to Mound City, in Ark. Affiant on every such occasion was charged ferriage by defendants, as is usual on other ferry-boats, and paid the same to defendants. Defendants asked him to pay his ferriage, and on other occasions he went to them voluntarily and paid the same. Defendants, when asking affiant for money, did not say it was for ferriage, but merely requested him to come up and settle, or come up and pay his way. Affiant has frequently heard defendants demand and receive the same from others, as above stated. Affiant heard defendants say, they would not charge ferriage, but they would sell a cigar or drink of liquor for the amount of ferriage. Affiant heard defendants, when settling with movers and others, inquire particularly as to the number of horses, &c. Affiant paid defendants 25 cents each trip, which affiant believes the usual rate of ferriage.

CURTIS C. ROBBINS.

State of Tennessee, Shelby County.

Curtis C. Robbins makes oath, that all the matters and things stated in the foregoing affidavit are true, to the best of his knowledge, information, and belief. Sworn to and subscribed before me, Dec. 6th, 1851. A. J. McLEMON, D. C. and M.

Affidavit of James Titus.

James Titus makes oath, that on Tuesday after the 1st Monday in October, 1851, affiant went up the river upon   to Mound

City, in Ark., from the landing in Memphis, Tenn., upon the ferry-packet run between these two points by defendants, and the next day thereafter affiant returned to Memphis upon the same boat; on each of these occasions when affiant applied to said defendants to pay his ferriage, defendant told affiant he could not charge him any ferriage, but that he sold some brandy, cigars, &c., which he would sell him. Affiant on each occasion took an ordinary drink of brandy, which was a pretty good article, for which he was charged and paid each time 50 cents for each drink. Affiant has travelled between the above mentioned points on the same boat some 3 or 4 times since the period above mentioned, on each of which occasions he paid his ferriage in the same manner as above stated.

JAMES TITUS.

Sworn to and subscribed in presence of
Dec. 6th, 1851. JAS. M. WILLIAMSON, C. & M.

R. L. Kerill, of lawful age, makes oath, that he was employed by G. W. Cheek & Co. as pilot on the boat that they have for some time run from Memphis, Tenn., and Mound City, Ark., from the 10th October, 1851, to the 18th of the same month: during the time defendants run said boat for the purpose of carrying passengers, horses, wagons, stock, &c., across the river between those two points, affiant saw defendants constantly during the time he was on said boat collect ferriage from passengers who crossed the river upon said boat, and asking them for the amount of their ferriage. Affiant has seen movers, who had wagons, stock, &c., on board, settling the amount of their ferriage with defendant, and paying defendants the amount of their charges. Defendants charged and collected ferriage on this boat while affiant was upon it, as any other ferry-boat would do. Defendants charged the usual rate of ferriage, perhaps a little more. Defendants, by running their boat, diverted a great deal of travel from the ferry of complainants, and thus injured their business greatly. Affiant, while he was on the boat, heard and believes that defendants took upon an average each day at least $50.

R. Lu. KERILL.

Sworn to and subscribed before me.

A. J. McLEMON, D. C. and M.

Affidavit of J. D. Danbury.

Some time after the 26th of September I crossed the Mississippi River from Memphis to Mound City in Arkansas, on G. W. Cheek's steam-packet St. Cloud No. 2, in company with several gentlemen; on which occasion I asked Mr. John A. Cheek, when near the landing at Mound City, what was the amount of my ferriage; he replied that he did not charge anything, but that I might make the boat a present of what I pleased. I gave him 75 cents to pay for myself and two others, and asked him if it was enough; he said it would have been enough when they charged, but, at present, they charged nothing. J. D. DANBURY.

Sworn to and subscribed before me, Dec. 6th, 1851.
A. J. McLEMON, D. C. and M.

George Malone, of the county of Shelby, and State of Tennessee, affiant, and of lawful age, makes oath that he has frequently crossed the Mississippi River, from the landing at Memphis, Tennessee, to Mound City in Arkansas, upon the boat run between those two points by defendants; and since the filing of complainants' bill, affiant on every such occasion paid his ferriage, as he would do, and is usual on any ferry-boat; sometimes defendants would say that they did not charge ferriage, but they would require affiant to pay them the amount of their ferriage for 1 cigar, a drink of liquor, or something else of small value: defendants have frequently, as otherwise, collected the ferriage from affiant without making any pretext or cover about selling him any trifle in lieu of charging ferriage. Affiant sometimes paid defendants 25 cents for himself alone for his ferriage to Mound City from Memphis, and the same back to Memphis: defendants have lately charged him but 25 cents for his ferriage from Memphis to Mound City, and thence back to Memphis; the above amounts charged by defendants for ferriage affiant believes to be nearly the usual ferriage rates. Affiant, when on the boat of defendants, as above stated, has often heard defendants, or some one of them or their agents, call upon others who were likewise upon the said boat, to come up and pay their ferriage; and he has frequently seen persons thus called on pay their ferriage in money, without receiving from defendants any other pretended equivalent for the same.

Affiant further states, that since the 26th Sept., 1851, he has crossed the Miss. River upon defendants' boat, as above stated, about six times, and on each occasion witnessed what has been above stated. GEORGE MALONE.

State of Tennessee.

George Malone makes oath that the matters and things stated in the foregoing affidavit are true, to the best of his knowledge, information, and belief.

Sworn to and subscribed before me, Dec. 6th, 1851.
A. J. McLEMON, D. C. and M.

Thomas Peters makes oath: That some time after he engaged to construct a part of the Arkansas River levee, which was in September last, he had crossed the Miss. River twice on Cheek's Mound City packet St. Cloud; that he at one time offered to pay ferriage, and he was told by the proprietor that he could not charge ferriage, but he would give him a cigar for 25 cents; he also made an arrangement with the said boat to carry over from Memphis to Mound City various articles of tools, bedding, plank, and rum; the bill for the ferriage of these things he does not yet know, but they are charged to him by the parties owning the boat; the only agreement as to price was that it should not be high; these transactions have taken place since the 26th of September. When on the boat I heard the proprietor say repeatedly he could not receive anything as ferriage, but would sell a drink of liquor for certain prices, or a cigar; for instance, he gave 25 cents for a cigar himself, and saw a mover pay $3 50 for a drink; whether he drank it or not don't remember. THOMAS PETERS.

Thomas Peters makes oath that the matters and things stated in the foregoing affidavit are true, to the best of his knowledge, information, and belief.

Subscribed and sworn to Dec. 6th, 1851, before me.
A. J. McLEMON, D. C. and M.

H. F. Doniss, of lawful age, being duly sworn, makes oath: That about the last of Nov. 1851, he crossed the Miss. River on the boat of Geo. W. Cheek & Co., which the defendants have run for some time between Memphis and Mound City, Ark. Affiant crossed the river from Memphis to Mound City, and had in company with him another gentleman, who was charged by defendant 25 cents for ferriage, which amount this affiant paid defendants. Defendants did not charge affiant on this occasion, as he was employed that day to perform some duty upon the boat. Affiant crossed the Miss. River as above stated upon defendants' boat some 3 or 6 days previous to the above date, and defendants charged him 25 cents for ferriage, which this affiant paid them; on this occasion, defendant told affiant he might go to the bar and take a cigar. Affiant on both of the above occasions saw defendants collect ferriage from other passengers. H. F. DONISS.

Sworn to and subscribed before me, Dec. 6th, 1851.
A. J. McLEMON, D. C. and M.

I, J. P. Pryor, depose that within the last two months I crossed to the Arkansas side in Cheek's ferry boat, and paid as much as $1 00 ferriage; I think more than $1 00, but do not remember exactly; I think I saw others pay for being carried over by said ferry boat, belonging, as I am informed and believe, to Geo. W. Cheek.
JNO. P. PRYOR.

Memphis, Dec. 8th, 1856.

Sworn to and subscribed before me, Dec. 8th, 1851.
A. J. McLEMON, D. C. and. M.

William K. Cailduss, of lawful age, and of the county of Shelby and State of Tennessee, makes oath, that he and another gentleman crossed the Mississippi river upon the ferry-boat that for some time has been run by G. W. Cheek & Co., from Memphis, Tenn., to Mound City, Ark., on the 28th day of September, 1851; on this occasion affiant paid defendant 25 cents for his own ferriage, and 25 cents for the ferriage of his friend, who was in company with him; when affiant proposed paying the ferriage, he was told by defendants that they could not charge ferriage, but they would sell a drink of liquor or a cigar for 25 cents each. Affiant on this occasion took a cigar and paid as above stated; the amount affiant paid was about the usual rate of ferriage over and above the rate of the cigar he took. Affiant, on this occasion, saw defendants collect ferriage from a considerable number of other persons who crossed the river at the same time with him upon defendants' boat. Affiant states, on another occasion subsequent to the above, he with about one dozen other gentlemen, crossed the Miss. river as above, upon the boat of Geo. W. Cheek & Co., when they were all charged 25 cents each for their ferriage. On both occasions when affiant crossed the river on defendants' boat as above stated, ferriage was collected as is usual on ferry boats, with the exception that on the 28th day of 1851, ferriage was collected under pretext of selling a cigar. Affiant remembers that the first time he crossed the river on defendants' boat as before stated, defendant, E. Cheek, was on the boat and present when ferriage was collected. W. K. CAILDUSS.

December 8th, 1851.

Sworn to and subscribed before me,

JAS. W. WILLIAMSON, C. and M.

John V. Bangle, a citizen of Shelby county, Tenn., and of lawful age, makes oath, that on the 5th day of October, 1851, he crossed the Miss. river from the landing in Memphis, Tenn., to Mound City in Arkansas, on the ferry-boat that defendants, Geo. W. Cheek & Co., had run for some time past between those two points. Affiant was charged and paid 25 cents for ferriage for crossing from Memphis to the said Mound City; and affiant, the same day, returned from Mound City to Memphis, and was charged and paid 25 cents ferriage. These two amounts were charged and paid by defendants affiant for his ferriage for crossing said river upon the said boat of defendants. On the same day, at the same time, about one dozen families with wagons, horses, negroes, &c., crossed the said river upon the said boat, and were charged and paid their ferriage in presence of affiant; affiant saw the ferriage paid; heard the said persons asked to pay the same. On this occasion, the defendant, Elijah Cheek, was on the said boat, and was in command of said boat.

J. V. BANGLE.

Dec. 8th, 1851.

Sworn to and subscribed before me,

A. J. McLEMON, D. C. and M.

John P. Taylor, of lawful age, makes oath: That he is a resident of the city of Memphis, Tenn.; that on the 5th day of October, 1851, he, the affiant, crossed the Miss. river on the ferry-boat that the defendants, Geo. W. Cheek & Co., have run for some time from Memphis to Mound City, in Arkansas. Affiant crossed the said river on said boat from the landing in Memphis, Tenn., to Mound City, Arkansas; and affiant also returned the same day upon the said boat from Mound City to Memphis. Affiant was charged, and paid 25 cents for each trip across the river; that, for crossing from Memphis to Mound City, he was charged, and paid 25 cents for ferriage; and for crossing from Mound City to Memphis, he was charged, and paid 25 cents for ferriage. The amounts thus charged were for ferriage, and were considerably more than affiant had been in the habit of paying. On the occasion referred to, the defendant, Elijah Cheek, was on the boat, and in command of the same; he was ordering and directing the management of the boat. On the same day and occasion, affiant saw defendant charge and collect from a great many other passengers; there were a considerable number of movers, with their wagons, horses, families, negroes, &c., who were charged ferriage; and affiant saw the same collected from them; ferriage was charged and collected on this 5th day of October, 1851, as on any other ferry-boat; said defendant, Elijah Cheek, being present, and seeming to exercise a general supervision over the said boat. J. P. TAYLOR.

Sworn and subscribed before me, Dec. 9th, 1851.

A. J. McLEMON, D. C. and M.

E. W. M. Kaig makes oath, and states: That at this time he has no connection with the defendants herein, as counsel or attorney for them, or either of them; this connection, heretofore existing, having been dissolved by Elijah Cheek, one of the said defendants, and this affiant, some time in November, say about the 25th of said month, on account of a difference as to the remuneration to be paid by the said Elijah Cheek to this affiant. He states, that at the time of the issuance of the said injunction, the relation of client and attorney existed; and affiant did state and inform the said Elijah Cheek, that notwithstanding the injunction issued against him, he might lawfully run his boat from Memphis to Mound City, for his own purposes, and for all purposes necessary to the building and construction of the Memphis and St. Francis plank-road, or for the purpose of transmitting machinery, or materials to erect a saw-mill, which said defendants were building near Mound City; that the defendants could not transport persons, wagons, and teams upon their said boat for pay; and that defendants could not, directly or indirectly, receive pay or remuneration from persons crossing on their said boat; but that, if said defendants could afford to do so, they might transport persons, travellers, and their goods and chattels and effects, from the points herein named; to which the said Elijah Cheek said: "He could afford to run his boat without pay." But, if it is intended to be inferred, or insinuated, that affiant advised and counselled the said Elijah Cheek to run his said boat from the said points herein designated, and to evade the force of the injunction, by the sale of cigars or liquors, is false and untrue. E. W. M. KAIG.

Sworn to and subscribed before me, Dec. 11th, 1851.

A. J. McLEMON, D. C. and M.

Franklin Williams, of lawful age, and a citizen of Shelby County, Tennessee, makes oath, that between 3 and 4 o'clock of the 11th day of the present month, he saw considerable number of passengers, wagons, horses, oxen, &c., embark upon the boat that defendants have for some time run across the Miss. River as a ferry-boat from Memphis, on the Tenn. side of said river, to Mound City, on the Arkansas side. On the occasion above referred to by affiant saw three ox-wagons embark upon the said boat, and one 2 horse-wagon, one jack, and one colt, and a considerable number of men, women, and children, being families of movers, to whom said wagons and teams belonged. This affiant believes there were some 20 to 30 persons in all. Defendants took the above load of wagons, teams, passengers, &c., as they have been in the habit of doing since the establishment of their said boat,and seemed to this affiant, on said occasion, to be using their said boat in every respect as a ferry-boat. Defendants took the above named load in their said boat at their usual landing at Memphis, and went thence across the river with them as any other ferry-boat would do. FRANLIN WILLIAMS.

Sworn to and subscribed before me, Dec. 13th, 1851.

A. J. McLEMON, D. C. and M.

Alexander McGregor makes oath in the above cause that on yesterday, the 12th day of December, 1851, the defendants, Elijah Cheek, Geo. W. Cheek, and Wm. F. Cheek, were running their ferry-boat from the city of Memphis, on the Tennessee side of the Miss. River, to Mound City, in the State of Arkansas; that affiant knows that on yesterday said boat made two trips from the city of Memphis, from within the corporate limits and from its usual landing in said city, across said river to Mound City, and two trips back; that affiant does not know what said boat had on board in the two trips from Memphis; but he knows that on the last trip back from Mound City to Memphis on last evening, she had on board and transported across said river one ox-wagon and oxens; he heard Elijah Cheek say to a gentleman present—who said he had 8 or 9 more wagons which he wished to have carried across the river from Memphis on his, Cheek's, boat—that he was forbid from carrying them; but that if they would go on he could not help or prevent it, as he was getting too old to be fighting to keep teamsters off his boat, and that the judge must do the fighting; the said Cheek further said to the said gentleman that he had already on board some travellers, as passengers, and that these would come on whether he would or not.

ALEX. McGREGOR.

Sworn to and subscribed before me, Dec. 13th, 1851.

A. J. McLEMON, D. C. and M.

Calvin A. Littlefield makes oath, that on Thursday, the 11th day of December, 1851, and after the hearing of the matter of the contempt of the said Elijah Cheek in this cause, the said Elijah Cheek did run his ferry-boat, and carry wagons, horses, and jacks, and 45 passengers on said boat, leaving the front of Market street within the corporate limits of the city of Memphis ; and he, the said Elijah Cheek, went on said boat himself, and must have known that he was carrying said wagons and passengers ; and affiant further states, that said Cheek did, with his said boat, on yesterday make two trips up and two trips down with his said boat, running from Mound City to a point within the corporate limits of the city of Memphis, carrying wagons, horses, oxen, passengers, and some freight on each trip, with this exception, that there was no freight on the down trips. And the said above-mentioned acts were all within the knowledge of the said Elijah Cheek ; and the said wagons, &c., carried by said boat are the usual articles carried by a ferry-boat, and, in short, was an act of ferriage, as affiant unquestionably believes, and were in open violation of the order of this honorable court made in this cause. Said boat, upon each of these occasions, run between the city of Memphis and the place known as Mound City, in Arkansas, as affiant believes. C. A. LITTLEFIELD.

Sworn and subscribed before me, Dec. 13th, 1851.
A. J. McLEMON, D. C. and M.

J. B. Moseley, Sheriff of Shelby County, Tennessee, personally appeared in open court, and made oath in due form of law, that on the 26th of September, 1851, a writ of injunction was issued on that day by the Clerk and Master of the Common Law and Chancery Court of the city of Memphis, chancery side, in the case of R. C. Brinckley and al. vs. George W. Cheek, Elijah Cheek, and al., came to his hands on the same day of its issuance ; and that he executed and made known the contents of the said writ of injunction on and to John Cheek, A. G. Knapp, E. H. Porter, R. L. Kay and Elijah Cheek on the day that the same came to his hands, to wit, on the 26th of September, 1851, as he has made his return on said writ, and that the said return is true, in substance and in fact.
J. B. MOSELEY, Sheriff.

Sworn to and subscribed before me Dec. 11, 1851.
A. J. McLEMON, D. C. and M.

To all which, and every part thereof, the defendants' counsel at the time objected ; which objection was overruled.

The plaintiffs' counsel then read Exhibits marked "D, E, and F," being inspection, &c. of boat *St. Cloud;* Jankins, inspector's handwriting being proved, and Hill's handwriting being admitted ; to which defendants objected. Also the lease from city to Daniel Hughes to keep a ferry, marked G, and the assignment thereof to plaintiffs, which defendants' counsel also objected to ; but both said objections were overruled by the court, and said papers read as evidence. The plaintiffs admit and say before the court, that they run their ferry-boat under an Arkansas license, from and after 13th June, 1853, and claim no damage after that date.

The plaintiffs then rested their case. Thereon the defendants' counsel read in evidence the proceedings and order of the County Court of Shelby on a proceeding for ferry license, and the action thereon in the Circuit and Supreme Court, and the final action of the County Court granting a ferry license to John Overton and others, as follows, to wit:—

Be it remembered, that at a Court of Pleas and Quarter Sessions, begun and held for the county of Shelby at the court-house in the town of Raleigh, on the third Monday in April, 1829; present, John Ralston, James Ralston, James Warner, Thomas Powers, Francis W. Weatherd and Littleton Henderson, Esquires, they being a majority of the acting justices, the following petition was presented to the court; which said petition is in the words and figures following, to wit:—

The petition of John Overton, John C. McLemon, Marcus B. Winchester and others, heirs of the late James Winchester, William Winchester and George Winchester, devisees of the late William Winchester, represent that they are the legal owners of about 1300 acres of land, part of a 5000 acre tract granted to John Rice, lying on the east bank of the Mississippi, including the mouth of Wolf River, and running down the river eastwardly for complaint; that they believe that a public ferry should and ought to be established somewhere below the mouth of Wolf, and within four hundred yards below the mouth of the river; that in their opinion, public convenience requires a ferry to be kept there; and that they being the legal owners of the same, they humbly pray that this court may grant such an order, as they are not the owners of the land on the west bank of the said river.

P. M. MILLER.

And at the same time and on the same day, to wit, April term, 1829, present same justices as above, the following order was made, which said order is in the words and figures following, to wit:—

It is ordered by the court, that the matter be laid over for a final hearing, until Wednesday the third day of this term.

And, at another day, to wit, Wednesday the third day of said term, present, John Ralston, James Ralston, James Warner, Francis W. Weatherd, Thomas Powers, and Littleton Henderson, they being a majority of the acting justices; when the following remonstrance to the court, against granting a ferry to the petitioners, which said remonstrance is in the words and figures following, to wit:—

State of Tennessee, Shelby County Court, April term, 1829.

The Mayor and Aldermen of the town of Memphis, the same being a town corporate, by McAlpin and Walker, their attorneys, come here into open court and allege that the petition of John Overton, John C. McLemon, Marcus B. Winchester, and others, for license to establish a ferry across the Mississippi river at the public landing, within the corporation limits of the town of Memphis, ought not to be granted or allowed; because they say, that heretofore, to wit, on the 23d day of March, 1828, they established and are now keeping a ferry within the corporation limits and at the public landing of said town of Memphis, for the carriage and accommodation of travellers and other persons across the Mississippi river, and all other public conveniences; that they are entitled to and claim the sole and exclusive right to said public landing. They believe that public convenience does not require more than the one ferry which is now used as aforesaid. They, therefore, pray that the said petition may be dismissed by the court here, and that they be allowed to continue in the peaceable possession, use and exercise of said ferry established as aforesaid on the land within said town, marked and designated on the plan of the same "Public Landing."

McALPIN & WALKER,
Attorneys for Corporation.

And on the same day and term, to wit, Wednesday, third day of April term, 1829, present John Ralston, James Ralston, James Warner, Thomas Powers, Francis M. Weatherd, and Littleton Henderson, Esquires; when the following entry was made in this cause, which said entry is in the words and figures following, to wit:—

By the consent of the parties, and with the assent of the court, this cause is continued to-morrow for further argument.

And now at this day, to wit, at a court of Pleas and Quarter Sessions continued and held for the county of Shelby, at the court-house in the town of Raleigh, on Thursday the 23d day of April, 1829; present, John Ralston, James Ralston, James Warner, Thomas Powers, Francis M. Weathurd, and Littleton Henderson, Esquires, they being a majority of the acting justices, the following order and judgment, which said order is in the words following, to wit:—

JOHN OVERTON and als, petitioners,
against
THE CORPORATION OF MEMPHIS, defendants.
} On petition for a Ferry.

This day came the parties again by their attorneys, whereupon, argument being heard thereon, and the matters and things arising in this question being by the court heard and fully understood, it is considered by the court the petition of the proprietors for a ferry across the river Mississippi be dismissed; from which opinion of the court the pl'ffs by their attorney prayed an appeal to the Circuit Court of Shelby County, which is granted accordingly.

And at another time, to wit, at a term or the Circuit Court of

Shelby County and State of Tennessee, and on Friday of that term and the 19th day of, an order was made in the words following:—

JOHN OVERTON and als. vs. CORPORATION OF MEMPHIS.	Petition for Ferry.

This day came the parties by their attorney, and with the assent of the court and by consent of the parties, this cause is continued until the next term of this court.

And at another time, to wit, at a Circuit Court begun and held at the court-house in the town of Raleigh, on the third Monday in December, 1829, and on Thursday, the 20th day of the month, and 4th day of the term, the Hon. J. C. Hamilton presiding, by interchange of ridings, when the following order and judgment was entered:—

JOHN OVERTON & als. vs. THE CORPORATION OF MEMPHIS.	Petition for Ferry. Appeal from County Court.

This day came the parties by their attorneys, and this cause being fully heard and considered by the court, it is considered by the court that the judgment of the court below be reversed: and it is further considered that this cause be sent back to the County Court, with instructions to grant the petition of the plaintiffs, and to take bond and security as in other cases, and to fix the rates of ferriage.

Whereupon, the counsel for the said corporation moved for an appeal to the Supreme Court in the nature of a writ of error; it is considered by the court that the appeal be granted, and that the corporation be required to give security for the same. Whereupon, said bond was entered into by Isaac Rawlings, Mayor, and R. C. McAlpin, security.

And at another time, to wit, on the same day, the defendants tendered their bill of exceptions, and prayed the same to be made a part of the record, which is in the words and figures following, to wit:—

Be it remembered that at the December term of the Circuit Court of Shelby County, on this day, to wit, the 25th day of December, being the 5th day of said term, came on to be tried the cause of John Overton, John C. McLemon, and others, against the corporation of the town of Memphis; on which trial the following facts were proved, to wit:—

The plaintiffs introduced a grant from the State of North Carolina to John Rice for 5000 acres of land, including that on which they applied for license to establish a ferry: and also deeds of conveyance to themselves, regularly deraigned from the original grantee.

For the defendants it was proved, that in 1819 the plaintiffs surveyed and laid out the town of Memphis; that they caused a map or plan to be drawn and engraved, which map or plan is hereto at-

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tached, and prayed to be taken as a part of this bill of exceptions: it was also proved that the plaintiffs had sold and conveyed lots to the number of 150 between the years 1819 and 1827; all of which conveyances contain substantially the words of the one hereto attached, and which is prayed may be taken as a part of this bill of exceptions; it was also proved the corporation of Memphis was organized in pursuance of its charter in March, 1827.

On the foregoing facts the court reversed the judgment of the County Court, and ordered the cause to be remanded to the County Court with directions to grant the petition. To all of which the defendants, by attorneys, except, and this their bill of exceptions; and pray the same may be signed and sealed, and made a part of the record, which is done accordingly.

J. C. HAMILTON, [SEAL.]
Judge, &c.

The deed of conveyance prayed to be made a part of the record in the foregoing case, is in the words and figures following, to wit:—

Whereas, Andrew Jackson, John Overton, and James Winchester, all of the State of Tennessee, and George Winchester and William Winchester, of Baltimore, devisees of William Winchester, deceased, owners of a 5,000 acre tract of land, including the mouth of Wolf River, and granted by the State of North Carolina to John Rice, by grant No. 283, dated April 25th, 1789, did in the year 1819 contemplate laying off a town at the mouth of said river, which has since been done, and is now called Memphis; and whereas, the aforesaid owners, apprehensive that the death of either of them might embarrass the aforesaid object of laying off a town, selling the lots, and making deeds for the same, did by mutual agreement bearing date the 6th day of January, 1819, provide that in case of the death of any one or two of the aforesaid parties, then the right, title and interest which the party so dying shall have in said land shall instantly vest in the survivor or survivors, so far as respects laying off said town and large lots adjacent thereto, and making deeds for the same; and whereas, the said Andrew Jackson did on the 13th of October, 1823, by deed of conveyance sell and convey all his right, &c., in and to the aforesaid 5,000 acre tract to John C. McLemon, of Nashville: Now, therefore, know all ye whom it may concern, that we, the aforesaid George Winchester and William Winchester, devisees of the said William Winchester, deceased, and John Overton, surviving parties to the before recited agreement, Andrew Jackson, also surviving party, if he still have any right in law or equity to convey, and John C. McLemon, assignee of the said Andrew, as surviving parties to said agreement and as present owners of said land, for and in consideration of the sum of three hundred and fifteen dollars, to us in hand paid, do, by these presents, give, grant, bargain and sell, enfeoff and convey, to John Rankin and Samuel Rankin, their heirs and assigns, forever, four lots or parcels of ground, situate, lying and being in the town aforesaid, and designated on the plan thereof as Nos. 15, 16, 21, and 22, and bounded as follows, viz: Nos. 15 and 16 together, on the north by Concord Street, and on the east by Chickasaw Street, on the south by lot No. 14, and on the west by the public landing; No. 21 and 22 together, on the north by lot No. 23, on the east by Chickasaw Street, on the south by an alley, and on the west by the public landing; being each thirty-seven feet one and a half inches front on Chickasaw Street, and one hundred and forty-eight and a half feet deep; to have and to hold the said lots, Nos. 15, 16, 21, and 22, with all their appurtenances, to the only proper use and behoof of them, the said John Rankin and Samuel Rankin, and their heirs and assigns forever; and we do further covenant with the said Rankin that the before recited lots and bargained premises we will forever warrant and defend against the right or claim of all persons whomsoever.

In testimony whereof we hereunto subscribe our names and affix our seals this 10th day of November, 1828.

JOHN OVERTON, [SEAL.]
JOHN C. McLEMON, [SEAL.]
By their att'y in fact, WILLIAM LAWRENCE.
GEORGE WINCHESTER, [SEAL].
By M. B. WINCHESTER,
Agent & Att'y in fact.
WILLIAM WINCHESTER, [SEAL.]
By M. B. WINCHESTER,
Agent & Att'y in fact.

Witness—V. D. BARRY,
R. C. MCALPIN.

State of Tennessee, Shelby County Court.

January Session, 1829.

This deed was proved by the oath of W. D. Bury and R. C. McAlpin to be the act and deed of William Lawrence and M. B. Winchester, attorney in fact, &c., and ordered to be certified to the register's office.

Test, ROBERT LAWRENCE, Clerk of the said Court.

State of Tennessee, Shelby County.

I, Samuel R. Brown, clerk of the Circuit Court for the county of Shelby, do hereby certify that the foregoing pages contain a true and complete copy of the said cause of John Overton, John C. McLemon and others, against the corporation of Memphis; together with the papers referred to, and called for in the bill of exceptions.

In testimony whereof I have hereunto set my hand and caused my private seal to be affixed—there being no seal of office—at office this 15th Feb'y, 1830. S. R. BROWN, Cl'k Cir. Court.

The following proceedings were had in the above cause in the Supreme Court at Jackson, at December term, 1830, to wit:—

Jackson, January 1st, 1831.

The Corporation of Memphis, Plaintiff,
vs.
John Overton, John C. McLemon, Marcus B. Winchester, William Winchester and George Winchester, Defendants.
In Error.

This day came the parties aforesaid by their attorneys, whereupon with their consent, it is ordered that this suit be continued until next term.

And at another term, to wit:—

Jackson, May 15th, 1832.

The Corporation of Memphis, Plaintiff,
vs.
John Overton, John C. McLemon, Marcus B. Winchester, William Winchester and George Winchester, Defendants.
In Error.

This day came the parties aforesaid by their attorneys, whereupon as well the record and proceedings in the court below, as the matters for error assigned, being seen and by the court fully understood, and mature deliberation thereon had; for that it appears to the court, that in the record and proceedings aforesaid, and in the judgment aforesaid there is no error; it is therefore considered by the court that the judgment in the court below aforesaid, be in all things affirmed, and stand in full force and effect; anything in the said causes of error above assigned and alleged in any wise notwithstanding. And that this suit be remanded to the county court of Shelby below, that proceedings may be then had in conformity to this decision.

And it is further considered by the court, that the defendants in error, the said Overton, McLemon, and Winchester, receive of the plaintiffs in error, said corporation of Memphis, their costs by them about their defence in this behalf, as well as in the court below, expended, &c.

And at another day, to wit:—

Jackson, May 16th, 1832.

The Corporation of Memphis, Plaintiff,
vs.
John Overton, John C. McLemon, Marcus B. Winchester, William Winchester, and George Winchester, Defendants.
In Error.

This day came the parties aforesaid by their attorneys; and it appearing to the satisfaction of the court that Isaac Rawlings, Jr.

and Robert C. McAlpin entered into a bond for the said corporation of Memphis, for the prosecution of their writ of error in this behalf: It is therefore, on motion, considered by the court, that the said John Overton, John C. McLemon, Marcus B. Winchester, William Winchester, and George Winchester, recover of the said Isaac Rawlings, Jr. and Robert C. McAlpin their costs by them about their suit in this behalf, as well as in the court below, expended, &c.

State of Tennessee.

I, William H. Stephens, Clerk and Master of the Supreme Court of the State of Tennessee, at Jackson, hereby certify that the foregoing 15 pages contain a full, true and perfect copy of the transcript of the case of the Corporation of Memphis *v.* J. Overton et al., and the proceedings of the Supreme Court rendered therein.

Witness my hand at office in Jackson, this 6th day of December, 1851. WM. H. STEPHENS.

State of Tennessee, Shelby County, January Term, 1833.

At a Court of Pleas and Quarter Sessions, begun and held at the court-house in the town of Raleigh, for the County of Shelby, on the third Monday in January, A. D. 1833, present Isaac Rawlings, Joseph Locke, T. M. Moatherwell, Dudley Dunn, David Dunn, Andrew Reinhert, John Ralston, Elias Ferguson, Eppy White, William Williams, James Warren, Jas. L. Vaughan, C. B. Murray, N. Spalding, Jefferson Messick, J. C. Rudisell, W. M. Butler, J. M. Thomas, J. W. Royster, the following entry appears of record, to wit:—

JOHN OVERTON, JOHN C. MCLEMON, MARCUS B. WINCHESTER, and Others, heirs of the late James Winchester, GEORGE WINCHESTER and WM. WINCHESTER, heirs of the late Wm. Winchester, Plaintiffs,
vs.
THE MAYOR AND ALDERMEN OF THE TOWN OF MEMPHIS, Defendants.
} Upon an Appeal respecting a Ferry.

This cause coming on to be heard, upon the application of said plaintiffs, in the presence of the parties, by their counsel; after argument, fully considering the same, it is ordered by the court, in compliance with the judgment of said Supreme Court in said appeal, that said Overton, McLemon, M. B. Winchester, et al., heirs of the late James Winchester, George Winchester and Wm. Winchester, heirs of the late Wm. Winchester, have leave to keep a public ferry on their own land, on the east margin of the Mississippi River, at Memphis, across said river, where a ferry is now kept by Zechariah Hite.

All which was objected to by plaintiffs, and objection overruled.

The defendants then read in evidence a license to Jankins, from the County Court of Crittenden County, Arkansas, to keep a ferry, &c., and is as follows, to wit:—

July Term of Crittenden County Court,
July 16th, 1851.

And now on this day came Robertson P. Tally, and moved the court to reconsider the order made upon yesterday, settling the taxation, and also the rates of ferriage, upon the ferriage owned or controlled by James Jankins, at the point opposite the city of Memphis. And also came J. A. Lovejoy, as the attorney for the said James Jankins; and after hearing the argument of counsel, it is ordered, adjudged, &c., by the court, that the said James Jankins be taxed the sum of ten dollars for the privilege of keeping a public ferry across the Miss. river, opposite Memphis, Tennessee, per annum; and that the clerk of this court issue to the sheriff of Crittenden, a license for said ferry, and deliver the same to him; and that the rate of ferriage at said ferry be as follows:—

For each man, woman, or child,	15 cents.
For each horse, mule, mare, jack, or jenny,	15 cents.
For each wheel of any wagon, cart, or vehicle,	15 cents.
For each brace of cattle,	10 cents.
For each brace of sheep, hogs, or goats,	5 cents.
For each 100 lbs. of freight,	5 cents.
For each horse, mare, mule, jack, or jenny, which draws any cart or vehicle,	15 cents.

A true copy from the record, the 17th day of July, 1851.

A. P. LYLES, Cl'k.

State of Tennessee, County of Crittenden.

This is to authorize James Jankins to keep a public ferry across the Mississippi river, at a point in Crittenden County, opposite Memphis, Tennessee, for and during the time of twelve months, from the 14th day of July, 1851; he having paid into the county treasury of Crittenden County, for the use of common schools, the sum of ten dollars, the full amount assessed upon said ferry by an order of the County Court of said county aforesaid, at the July Term thereof, 1851.

Witness my hand as clerk of the Circuit Court, and ex-officio clerk of the County Court of the county of Crittenden, State of Arkansas, at office at Marion, this 17th day of July, 1851.

A. P. LYLES, Cl'k.

Which was objected to; and objection overruled.

The defendants' counsel then read in evidence the original answer of Elijah Cheek, &c., to the injunction bill; the notice or advertisement of Geo. W. Cheek, &c., which are as follows, to wit:—

And on the 29th day of September, 1851, came the defendants, George W. Cheek, Elijah Cheek, and Wm. F. Cheek, and filed their answer to the foregoing bill, in words and figures following, to wit:—

In the Chancery Court of the city of Memphis.

ROBERT C. BRINCKLEY *et al.*,
vs.
GEORGE W. CHEEK *et al.*

The joint and separate answers of George W. Cheek, Elijah Cheek and William F. Cheek to the bill of complaint herein filed.

Respondents reserving and saving to themselves the advantages, &c., of the imperfections and uncertainties, &c., for answer thereto, or so much as they are advised it is *is* material for them to answer unto, say, that these respondents are the persons, and the only persons, who compose the firm of Geo. W. Cheek & Co.

In reference to the exclusive right of and privilege of complainants to run a ferry across the Miss. river, from a point within the limits of the corporation of Memphis, as conferred by the action of the courts of the county, respondents know nothing; nor do they know, or admit, but deny, that complainants have had conferred on them any such exclusive privileges; and require full proof of the same.

Respondents positively deny, that they have erected and are running a ferry-boat from Memphis, and are carrying passengers across the Miss. river; but respondents admit that they have established a packet-boat, and have been running under the rules, regulations and restrictions of other packets between the two points, or towns, on the Miss. river, from Mound City in the State of Arkansas, 5 miles above the city of Memphis, to the latter place, for the purpose of transporting commerce, goods, wares, merchandise and passengers, desirous of travelling from one point to the other; and also for the purpose of transporting machinery, materials, produce, provisions, and other materials, necessary to the erection and building the Memphis and St. Francis plank-road in the State of Arkansas.

Respondents say further, that they are the owners of the soil at the point from which the said packet leaves for the city of Memphis; that the said boat does not lie within the corporate limits of the city of Memphis longer than is necessary to receive and discharge her freight and passengers; nor does the said packet have any place designated for landing her freight, &c., in the city of Memphis, to the exclusion of any other steamer and packet-boats; and that the place designated in the advertisement of respondents, and exhibited in the bill of complainants, was only introduced to designate the points between which the said packet would discharge and receive freight, &c., if not occupied at the time by other steamers and packet-boats; and that, in plying the said packet-boat between Mound City and the city of Memphis, that it was intended by respondents, and they have so done, to land persons on their way to Mound City on the east side of said river in the State of Tenneseee, or on either of the several islands intervening between Mound City and the city of Memphis; and in running from Mound City, respondents land freight or passengers at any point desired on either side of the river, or on either of said islands. Respondents admit, that they have made no application to the County Court of Shelby County for a license to erect and keep up a public ferry, nor any authority for the same, nor do they desire it; as they had not intention of running said boat as a ferry-boat; nor have respondents so run said packet; they positively deny that they have attempted to evade the law, or to enact a fraud upon it; or that they have established a ferry-packet to run from said city of Memphis to Mound City for the purpose, and with the intention of injuring complainants, and directing the travel from their said ferry, and of depriving them of their emoluments derived from their said ferry; but for the purposes herein stated; and for the further purpose of affording the citizens who reside in close proximity to the said Mound City, an opportunity and facility of transporting their products to the Memphis market.

Respondents further state that a town has been laid out and established at Mound City; there are now several buildings erected in said town; a blacksmith shop, a tavern, a large stable, for the public accommodation, and an extensive sawmill adjacent thereto, the property of respondents and others; and that said packet is designed to be used after the completion of said plank-road, also for the purpose of transporting lumber from said mill at Mound City to the market in the city of Memphis; in fact and in truth, the public interest and convenience require such a packet; that it is not a ferry-boat; nor was such the design or intention of respondents in its erection and establishment. That true it is, that they have transported persons, wagons, &c., as well as merchandise, machinery, and materials to build and erect the said plank-road, for which respondents have charged and received what was deemed a fair and reasonable compensation therefor; but the prices charged were more than double the amount of the ferriage fixed and allowed to complainants by the County Court of Crittenden County, in the State of Arkansas, for ferriage across said river; what the rates fixed for ferriage by the County Court of Shelby, in the State of Tennessee, respondents have no means of knowing, as they have never examined the order of said court granting the privilege of a ferry to complainants, if in fact any such order ever was made. And complainants have no rate of ferriage posted upon said ferry-boat, so that the public and persons crossing in said ferry-boat may be informed as to the toll fixed by law. Respondents state that the Military road on the west side of said river, from its terminus runs up the said river, varying from ½ mile to 3 or 400 yards from said river, until it intersects a point west of *west of* Mound City, about 500 yards from the landing of said city.

Respondents deny that the said ferry of said complainants has been continually kept up in good and sufficient order for public use ever since the time of the alleged grant by the Supreme Court of the State of Tennessee, with good and sufficient boats, and in good and sufficient order. Respondent knows not whether the said John Overton has departed this life, save from information; and whether several, or all, or none of the said petitioners for the said privilege of keeping a ferry across the Miss. river have sold and conveyed their interest in the said ferry on the banks of said river, where the said ferry is erected, within the limits of the corporation of Memphis.

Respondents have no knowledge or information, and they deny that the privilege of keeping of said ferry is vested in the complainants, Brinkley, Topp, Winchester, Vance, Overton, and Claybrook; but respondents admit, that at the present writing, the complainant Jankins has the management and control of said ferry, and is keeping up the same; but, at what expense, respondents have no means of information.

Respondents deny that have their runners out on any road of importance, to notify travellers and emigrants of their packet, so as to induce them to travel up and over the river upon their boat; but state, that they employed John Cheek to superintend and to see that the freight was properly prepared for shipment; and when freight was discharged to have the same looked after, until the owners were notified thereof; and doubtless, the said John Cheek did inform the travelling public, that the packet of respondents was a more expeditious means of transportation than crossing over the river and travelling up the same for five miles; but they positively deny having any such intention of running the said packet as such during the travelling season, and then to lie-to and discontinue the same; but design to use the same so long as she can be supplied with the business as a packet; and if no business of transporting freights, &c., are furnished respondents, they insist on the right claimed by other packets, of lying-to during the season when there is no business; that the boat is their own property, and they are entitled to all the rights and immunities of other packets running the Miss. River.

Respondents further state, that regular packet-boats are almost daily leaving Memphis for intermediate points between N. Orleans, St. Louis, and Cincinnati; some of the said packets descending the said river to the mouth of St. Francis River, and then ascending the same until it intersects a point where the said military crosses said river; at which point, they discharge freight, receiving pay therefor. The same facts exist in reference to White River, Arkansas, Ouchita, Red, and all the navigable tributary streams of the Miss., whether ascending or descending the same; that said packet-boats are continually leaving the wharf within the corporate limits of the city of Memphis, in the practice of carrying and transporting wagons, teams, emigrants and travellers, goods, wares and merchandise, and a variety of other freights; landing and discharging the same at several places where the said military road crosses the St. Francis, White, and Arkansas Rivers; and in these cases even the frenzied and disturbed imagination of complainants have not demurred of applying for writs of injunction, restraining emigrants and travellers from taking passage on the several packets, and being landed or discharged therefrom, at the point where said road crosses said river; the first being about 35 miles, the second 60 miles, and the third 150 miles from the city of Memphis.

Respondent, Elijah Cheek, states: That he is the active business member of the firm in relation to said packet-boat; has done most, or nearly all the business thereto appertaining; and that his co-defendants, George W. and W. F. Cheek, have little or no knowledge of the same.

And these respondents having fully answered, pray leave to be dismissed with their reasonable costs, &c.

SWAYNE & KING,
Sol'rs for Respondents.

State of Tennessee, Shelby County.

Personally appeared before me, Elijah Cheek, one of the respondents in the foregoing answer, and makes oath in due form of law, that the matters of fact in the foregoing answer, as stated of his own knowledge are true; and those stated on information he believes to be true. E. CHEEK.

Subscribed and sworn to before me, 29th Sept., 1851.
JAS. M. WILLIAMSON, C. & M.

(Advertisement of Geo. W. Cheek & Co.)

" Movers and Travellers, look here !

" The best and cheapest, and quickest way for every one going to or coming from Arkansas, is to take the Memphis and Mound City packet.

" This packet will commence her regular trips on Friday, 19th instant, and continue making a trip every three hours from the landing at Memphis, between Adams and Jefferson streets, to Mound City and back. Mound City being located on that beautiful eminence, five miles above Memphis, on the Arkansas side of the river, and where the military road leaves the river, after continuing along the bank for that distance. Those taking this route can be landed five miles on their way, saving time and travel, for about the same price as has been charged heretofore for ferriage across the river. Our packet is in fair order for carrying wagons, carriages and stock, and our landing equal to any on the Mississippi river.

" GEO. W. CHEEK & CO.

" Memphis, Sept. 17th, 1851."

All of which was objected to by plaintiffs' counsel, and objections overruled.

The defendants' counsel then read in evidence the affidavit of Elijah Cheek, in the proceeding for contempt, as follows, to wit:

In this case, affiant, Elijah Cheek states, that defendants George W. and William F. Cheek are non-residents of Tennessee, and have no personal knowledge of, or active connection with, the matter of contempt as alleged in the affidavit of complainant, James Jankins, in this cause filed. That said affiant was, and has had the sole management, direction and control of said packet St. Cloud, for the said firm of Geo. W. Cheek & Co., and he alone is responsible for the things complained of in said affidavit; so far as properly the subject of complaint in the opinion of this court; but affiant states, he contemplated and designed no contempt of this court, as alleged in said affidavit, but always respected and regarded the authority thereof, as was, and is, the duty of him and every good citizen and law-abiding man. He states to the court that when he first heard of said injunction, he was at Mound City, also said boat, and stopped the same at said city, and came down in a skiff; and before moving said boat from said Mound City, immediately retained in this behalf an attorney of this court, learned in the law, viz.: E. W. M. King, and then showed to his said attorney the matters and things of the said bill and writ, for advice in the premises, affiant not being informed of the legal force and effect of the same, and of his rights and remedies in and about the same; and his said attorney thereupon advised affiant, on the examination of the said bill and injunction, and on deliberation, that he might lawfully continue to run the said packet between the points named in said bill, and to transport passengers and their effects, not charging pay therefor; that he was not restrained from transporting freight as before; that it was not intended by said bill and fiat thereon, to inhibit defendants wholly and entirely from running said packet from and to any point or points for the pleasure of themselves, or their friends, or about the business of defendants; nor for the transportation of passengers and their effects to the several landings and islands of the river from Memphis, unless for pay; and affiant states, that the said counsel of his said attorney, so learned in the law, he believed to be good and proper; and so believing, did accordingly as clients do, and ought to do, as affiant believes, and all this affiant expects to prove by the affidavit of said King upon his return from Arkansas.

Affiant says, that the said packet, running as aforesaid, was necessary to and used about the private business of affiant and the said Geo. W. and Wm. F., in the transportation of hands, materials and provisions for their own use in the construction of a levee and plank-road in Arkansas, and building at Mound City, which was owned by them or some of them; besides transporting parties aforesaid to said Mound City and back on said packet, and persons and their effects to the intermediate islands, and goods, wares and merchandise to said city when so desired to do, and towing boats and barges, and conveying hands and provisions and materials for others up to and above said city, for purposes of gravel and sand for the streets of Memphis, and in and about the construction of said levee; all of which, affiant contends, was not in violation of the said writ, but lawful and necessary to defendants as aforesaid.

He states, that he did not run said packet from Memphis to Mound City, and transport travellers and others and their effects from Memphis to said Mound City for pay, contrary to the prayer of said bill and the fiat thereon; but, on the contrary, he did always expressly declare and direct that no pay therefor could or should be taken; that this honorable court had enjoined him therefrom, whose mandates he was bound to obey; and so said and ordered it to be said to each and every person desiring to travel or transport on said packet. Affiant did say he had charged certain rates before the said writ was issued; many persons, he said, travelled on said packet not leaving one cent on or for said packet, or said defendants; but others, of their own free will and accord, and not at the instance or request of affiant, or by his authority, deeming it proper to leave something on and for said packet, did frequently purchase from defendant various articles of small value, but all less than the sums said defendants might have charged but for the said writ; and this, affiant distinctly repeats, was of their own free will and accord, affiant and his agent distinctly stating and showing that he had no right to claim pay and compensation; nor did he refuse the sums so paid as aforesaid under the disclaimers as aforesaid.

Affiant denies that he directed travellers, passengers, movers and others and their effects, from the pretended ferry of complainants, or injured, or intended to injure, the said ferry; though he did desire and endeavored to obtain the public favor in behalf of said packet, about which said defendants had paid and laid out large sums of money; and it is true, that many persons, with their wagons and effects, did desire to and did travel on said packet from Memphis to Mound City and said islands, but at their own instance and request, and not being directed from the said ferry by affiant; and affiant does not, and did not know, that they, or how many of them, were going to said ferry, if any; nor does he think the said Jankins, or the other complainants, could have so known; because affiant says, that many thousands have gone, and do go, west from Memphis by way of the packets up St. Francis, White, Arkansas, Washita and Red rivers; it is therefore false, as affiant states, that the said defendants, since the said writ issued, have continued to run the said packet in all things like a ferry-boat, and in the same way as they did before said suit; but, in consequence of the controversy, by reason of the said writ and the falsehoods of complainants circulated, they have sustained great and heavy loss and damages, for which, he says, complainants are liable to said defendants; and affiant states, that $5,000 are the least damages they ought to have of and from complainants, or will demand by legal steps, hereafter to be taken for their unjust, wrongful and oppressive interference in and with the rights of defendants, and the public will and convenience in this behalf. And affiant says, he believes it is false, as stated, that said Jankins has lost, by reason of the said packet, the said sum of $4,723; that said C. A. Littlefield, whose affidavit is above filed against said defendants, is father-in-law to said Jankins; and whilst hanging about the said packet avowed a different purpose than the making of his said affidavit; that he had no knowledge of the facts he states, about the division of the said travel, &c., and the same are false, as shown by affiant; nor what amount of said travel would have gone by the said pretended ferry of complainants; and it is false, as stated by him, that defendants have made the sum stated by him, nor anything like that sum, since the said 29th Sept., 1851, or from any day before then.

Affiant further states, that it is not true that the said writ was duly and regularly isssued, as prayed for in said bill, and ordered and awarded in the said fiat; and the same was not, therefore, a lawful writ, if the judge had the power to issue the same: because, he says, the said writ does not preserve the prayer of the said bill; and said fiat, so far, is not a process of this court, for which said affiant ought to be held responsible, according to the prayer of said affidavit, had affiant even violated the same, which he denies.

Affiant shows to your honor that the said writ issued and executed Sept. 30th, 1851, and the words therein, "unless permitted by the County Court;" and he says, that with or without the said words, as he is advised, he had a right under license from the County Court of Shelby County to run the said packet, and transport from Memphis to Mound City as a ferry for a pay; and he will produce the said license or order, which he states was granted at a term of the said County Court begun and held on the 1st Monday in October, 1851, and only a few days after the issuance and service of the said writ; and especially had he the said right, inasmuch as the said complainants in their said bill set up as ground for their said injunction, that the defendants had no license or any lawful authority from the said court. Affiant denies that a bond with securities for $10,000, as required by said *fiat*, was ever given before or since the issuance of said writ; and he shows the court the bond now in said court, by which it will appear that the same is without securities, and has but one security, and that one, as affiant has been informed, insufficient; and further he states, only a portion of defendants, but four of them, have executed the said bond.

Affiant therefore is advised that the said writ thereafter issued is not a lawful writ, so, if violated in fact, to authorize the punishment sought for affiant by the said affidavit.

Affiant denies the right of said Jankins or complainants to any sum of money from defendants, as prayed for in said affidavit. He denies any contempt of the court by any expression as employed by him; but does not recollect the expression attributed to him by said Jankins; but if used, it was in contempt of complainants or their agents on provocation given, and when excited thereby; and here again expressly states, that he has in all things duly respected the authority and power of the court; and whatever the court may think of his acts in the premises, his intentions were right and proper in regard to this court. He pursued the legal advice of learned counsel, as stated, and deemed he was right in that, as also in his own judgment in the premises.

Affiant therefore, in view of the premises, prays that the motion of complainants herein be disallowed, or if continued by this court, that he be allowed to give bond for his obedience and to proceed in said cause. E. CHEEK.

Sworn to and subscribed before me, the 8th December, 1851.
JAS. M. WILLIAMSON, C. and M.

To which plaintiffs' counsel objected, and the objection overruled by the court.

Defendants then read the said license to Hughes, and the assignment thereon, which is as follows, to wit:—

At a meeting of the Board of Mayor and Aldermen of the city of Memphis, on Thursday, the 15th day of November, 1849, present, Enoch Banks, Mayor; Messrs. Wright, Foulkes, Redford, Barry, Gaines, and Jackson, Aldermen:

The application of Daniel Hughes, Esq. for a ferry privilege for a term of years was presented, read, and ordered to be received; when it was moved by Dr. Foulkes, and seconded, that the subject be referred to a special committee, to be appointed by the Mayor, for investigation and report; which motion was adopted by the board. Whereupon, the Mayor appointed Messrs. Foulkes and Wright the Committee.

At a meeting of the Board of Mayor and Aldermen of the city of Memphis, on Friday, the 28th day of December, 1849, present, Enoch Banks, Mayor; Messrs. Wright, Pettit, Foulkes, Redford, Harris, and Kay, Aldermen:

The proposition or application of Daniel Hughes, Esq. to this Council for ferry privileges across the Mississippi River, within the city limits, for a term of years, was presented, read, and ordered to be received.

Hon. Mayor and Aldermen, city of Memphis.

Gent.: I will pay the corporation $25 a year for ten years, for a lease from the corporation, with the rights and privileges of keeping a ferry across the Mississippi River, granted to Can: my ferry shall at all times be subject to the direction of the board as to where the boat shall land north of Union Street; I will make and keep in repair my own landing; I only ask the corporation to keep me the sole right of ferriage—which I think they have—and will take the risque. I also agree and bind myself and assigns to keep a good and suitable steam ferry-boat to ply between Memphis and the Arkansas shore, and to keep the ferry in proper order.

Messrs. Foulkes and Wright, the committee to whom Mr. Hughes' ferry proposition was referred, made the following report, which was, on motion, ordered to be received, to wit:—

Your committee hereby recommend to the council to confer upon D. Hughes, Esq. the rights of ferriage for a term of years, so that the ferry rights and privileges may be adjudicated by the courts of the country. The question ought to be tested and decided, and your committee know no method so likely to decide it as the giving a lease upon the rights and privileges to some individual. Mr. Hughes wishes it, and your committee recommend that terms be agreed upon with him, so as to secure to this town a good and orderly ferry.

Dec. 28th, 1849. J. FOULKS,
R. WRIGHT, Committee.

When, D. Foulkes being seconded, the following resolution was adopted by the board, to wit: Resolved, that we accept the proposition of D. Hughes for ferry privileges, provided that he employ able and competent attorneys to prosecute the same; provided further, that the non-performance on his part of any of the stipulations therein contemplated, at any one period, for the space of three months, shall forfeit and render void this contract with said Hughes.

It was then moved and seconded that a committee be appointed to prepare a contract with Mr. Hughes, and present the same to this board at an early day for ratification; which motion was adopted; and the Mayor appointed Messrs. Pettit, Redford, and Foulkes the committee.

At a called meeting of the Board of Mayor and Aldermen of the city of Memphis, on Monday, Dec. 31, 1849, present, Enoch Banks, Mayor, Messrs. Wright, Rant, Foulks, Redford, Harris, and Kay, Aldermen; when the agreement or contract of Daniel Hughes with the Mayor and Aldermen for ferry privileges across the Mississippi River, for a term of years, was presented, read, and on motion, ordered to be received and accepted by the board as a valid contract between the parties, reading in the words and figures following, to wit:—

This lease, made and executed between Daniel Hughes, of the city of Memphis, of the one part, and the mayor and aldermen of the city of Memphis, of the other part, witnesseth that the said Hughes hereby agrees to lease from the mayor and aldermen the right and privilege of keeping a ferry in operation on the Mississippi River, and to land his boat, or boats, on the shore at Memphis at any point between Union Street and the Navy-yard fence—a line which may be designated for the mayor and aldermen, for the full use and term of ten years from this date. And the said mayor and aldermen do hereby lease, grant, and convey to the said Hughes, his heirs and assigns, the right and privilege to have and to keep in operation on said river a ferry-boat or boats, and the privilege and right of ferriage for the same, on the following conditions: Said Hughes is to have his ferry in operation by the 1st of September next, and to keep a suitable and substantial steam ferry-boat or boats to ply regularly between the city of Memphis, north of Union Street and the Arkansas shore of said river, for the purpose of conveying goods and passengers, horses, wagons, &c., and all kinds of property and persons; to make and keep in repair the landing at Memphis necessary for this ferry; to be subjected to the regulations of the city for a proper and convenient landing at the city as to where his boat or boats shall land, giving him 30 days' notice for a renewal, and paying him the expense he shall incur in making a new landing. Said Hughes will also pay the sum of twenty-five dollars a year rent for said ferry privilege to the city; he is also to employ able and competent attorneys, satisfactory to the council, to defend or to prosecute the claim of the Corporation to the ferry should it be necessary to protect said interest, &c., to said Hughes, as lessee of the city; and that the said Hughes shall forfeit all rights under this lease, if he neglects for three months at any time after the 1st of September next to keep the ferry up in good order, and with boats sufficient to meet the public wants at fair and reasonable rates of ferriage. And the mayor and aldermen of the city of Memphis have granted and leased hereby to the said Hughes, his heirs and assigns, on the above terms, the sole use and right which they have to the ferry privileges for the full term of 10 years, but lease only such interest as they may legally or equitably have to said ferry privilege. And the said Hughes, for himself, his heirs, and assigns, doth hereby bind himself and them in the penal sum of ten thousand dollars, that he will well and truly perform his contract, as above set forth, to the city, or forfeit the above amount. And the mayor and aldermen of the city of Memphis do hereby agree and bind themselves and successors in office in the like sum that they will well and truly observe and fulfil the above and foregoing agreement on their part. In witness of all which, the parties hereto have set their signatures and seals, at Memphis, this 28th day of December, 1849.

DANIEL HUGHES. [SEAL.]

Witness—S. R. RICHARDS, to the signature of
Daniel Hughes.

J. FOULKS,
GEO. R. REDFORD, } Committee.
J. W. A. PETTIT,

When Mr. Hughes appeared before the board and acknowledged himself a party to the foregoing contract, &c.

The foregoing is a true and perfect extract from the recorded proceedings of the board of mayor and aldermen of the city of *of* Memphis in relation to the contract of Daniel Hughes for ferry privileges, &c. In testimony whereof, I, Enoch Banks, mayor, have hereunto set my hand and caused the seal of the Corporation to be affixed this 31 day of Dec'r, 1849.

ENOCH BANKS, Mayor.

Attest—S. R. Richards, Recorder.

This deed was filed in my office for registration on the 23d day of January, 1850, at 9 o'clock A. M., and so noted in note-book No. 2, page 148. WM. P. REAVES, Register.

State of Tennessee, Shelby County.

The foregoing lease, with the mayor's certificate thereon endorsed, was duly recorded in my office, in book No. 4, pages 276, 277, 278, and 279. Witness my hand at office, this 25th day of January, A. D. 1850. WM. P. REAVES, Reg'r.

For value received I assign this lease from the city of Memphis, to use to Elijah Cheek. DANIEL HUGHES.

To which the plaintiffs' counsel objected, and objection overruled.

The defendants' counsel then read in evidence the argument of plaintiffs' counsel Bankhead, here filed, marked Exhibit No. 1.

The defendants' counsel then read the judgment of the Supreme Court of Tennessee in the supersedeas here filed, marked Exhibit No. 2, as follows, to wit:—

State of Tennessee, in Supreme Court at Jackson, at April term, 1855.

George W. Cheek, Elijah Cheek,
Plaintiffs in Error,
vs.
Robt. C. Brinckley, John S. Claybrook, Robertson Topp, John Overton, John D. Armour, and Wm. L. Vance.

The parties appear by their attorneys; and thereupon the record, proceedings, and judgment of the County Court and of the Circuit Court being seen and understood by the court; and the court being of opinion that in the proceedings and judgment of the Circuit Court there is manifest error; it is therefore ordered and decreed that said judgment be reversed, set aside, and for nothing held. And the court being of opinion, that in the decree of the County Court of Shelby County, granting the ferry privileges to the petitioners, George W. Cheek, and Elijah Cheek, there is no error; it is therefore ordered and adjudged that said decree of the County Court be in all things affirmed; and that said ferry from Memphis, in the County of Shelby, to Mound City, in the State of Arkansas, be set up and established; and that the petitioners G. W. and E. Cheek, be entitled to and have all the rights and privileges of said ferry, and the profits and emoluments thereof. That the place of landing at Memphis be between the foot of Jefferson Street and the navy yard, and the rates and charges of said ferry, be the rates and charges of and for the ferry kept by James Jankins at the date of the decree in the county court aforesaid. And it is further ordered and decreed, that the defendants pay all the costs of these proceedings; and that execution issue.

A true copy: teste, WM. H. STEVENS, Cl'k.
By J. K. STEVENS, D. C.

To which plaintiffs' counsel objected, and the objection was overruled.

The defendants then read a record from Arkansas, being grants from the courts of Crittenden County, of ferry privileges and licences for a series of years, including 51, 52, 53, &c., which is here filed, marked Exhibit No. 3, as evidence in the cause; and which here follows, to wit:—

State of Arkansas, Crittenden County.

At a County Court begun and held at the court-house in the town of Marion, in the county and State aforesaid, on the 14th day of July, A. D. 1851, the same being the second Monday in said month, and being the time appointed by law for the holding the county court for said county, was present and presiding the Hon. William P. Farmer, judge thereof, and present and in attendance, Lemuel D. Hendricks, one of the associate justices elect; and Edmund Richards, the other associate justice elect, failed to appear; thereupon, the judge ordered that the clerk of said court issue a subpœna directed to the sheriff of Crittenden county aforesaid, commanding him, the said sheriff, to summon some one of the justices of the peace of said county to be and appear forthwith before said judge, to assist in holding said court and to fill the vacancy occasioned by the non-attendance of the said Edmund Richards. Thereupon the said sheriff summoned Reuben T. Meeckham, a justice of the peace of said county, and the said Meeckham came forward and took the oath of office, and entered upon the duties of his said office as associate justice; where, when, and before whom, the following proceedings were had, to wit:—

(Court adjourned and convened on 1st July, 1851.)

And now on this day the court proceeded to assess the rates of taxation upon the Memphis Ferry at the point opposite Memphis: it is therefore ordered by the court that James Jankins be taxed the sum of one hundred dollars for the privilege of keeping a public ferry across the Missisippi river opposite Memphis, Tennessee; and that the clerk of this court issue a license for said ferry, and deliver the same to the sheriff of the county of Crittenden, in the State of Arkansas, and that the rates of ferriage be as follows, to wit:—

For each person 25 cents, except children under six years of age.

For each horse, mare, mule, jack, or jenny, 25 cents.

For cattle, 10 cents each.

For hogs, 5 cents.

For goats and sheep, each 5 cents.

For every cart, wagon, carriage or buggy, 25 cents for each wheel; and for every horse, mare, mule, jack or jenny, or ox which draws the same, 25 cents each.

For each barrel, box, or every other kind of freight, 5 cents per hundred pounds; and for all packages not weighing one hundred pounds, no ferriage is allowed.

(And it is further ordered by this court, that there shall not be any ferriage charged for the driver of any of the carts, wagons or buggies.)

(Reconsideration.) And now on this day, James Jankins presented to the court here his bond as ferryman across the Mississippi river opposite Memphis, Tennessee, with Samuel T. Gilbert, J. A. Lovejoy and Robert Hood, as his securities; which bond was approved of by the court and ordered to be filed, which is done accordingly. (To be reconsidered this day.)

State of Arkansas, County of Crittenden.

At a County Court begun and held at the clerk's office in the town of Marion, in the county and State aforesaid, on the 12th day of July, 1852, the same being the second Monday of said month, was present and presiding the Hon. William P. Farmer, judge thereof, and James A. Alexander and Reuben T. Meeckham, the associate justices elect, before whom the following proceedings were had, to wit:—

And now on this day the court proceeded to levy the tax and rates of ferriage upon the ferry across the Mississippi River, kept by James Jankins: It is therefore ordered by the court, that the said Jankins be taxed the sum of sixty dollars for the privilege of keeping a public ferry across the Mississippi, opposite the city of Memphis, Tenn., and that the clerk of this court issue a license for said ferry, and deliver the same to the sheriff of the county of Crittenden, in the State of Arkansas; and that the rates of ferriage be as follows, to wit:—

For each person, 25 cents.

For cattle, 10 cents each.

For hogs, goats and sheep, 5 cents each.

For each wagon, cart, carriage, carryall and buggy, 25 cents for each wheel; and for every horse, mare, mule, jackass, jenny, or ox that draws the same, 25 cents.

For each barrel, box, or any other kind of freight, 5 cents per 100 pounds; and for all packages not weighing 100 pounds, no ferriage is allowed.

And for a horse and rider 50 cents.

State of Arkansas, County of Crittenden.

At a County Court, begun and held at the court-house in the town of Marion, in said county, on this 11th day of July, A. D. 1853, was present and presiding the Hon William P. Farmer, judge thereof, together with James G. Berry and Thornsberry A. Porter, two associate justices of the peace elect, Oliver P. Lyles, clerk, and Braxton C. Cramp, sheriff of said county: when the court was declared to be duly opened in course, the following proceedings were had, to wit:—

This day came into court James Jankins, and made application to be permitted to renew his license, and to establish and keep a public ferry across the Mississippi River, which is a navigable stream constituting the eastern boundary of the county of Crittenden; to keep and run such ferry from the town or place called Hopefield, on said river, across to the city of Memphis, in Tennessee. And the court, upon consideration of the application, cannot decide the same at this term of this court, and orders the same to be laid over and continued until the next term of this court.

State of Arkansas, County of Crittenden, October Term, 1853.

At a County Court, begun and held at the court-house in the town of Marion, in the county and State aforesaid, this 10th day of October, A. D. 1853, present and presiding the Hon. William P. Farmer, judge thereof, together with Thornberry A. Porter and James G. Berry, Esqs., associate justices elect, Braxton C. Cramp, by Benjamin M. Arrington, his lawful deputy, and Oliver O. Pyles, clerk of said court; when the court was declared to be duly opened in course, the following proceedings were had, to wit:—

John S. Claybrook, petition for ferry.

Upon the application by petition in writing of John S. Claybrook; and it appearing to the court that he is the owner of the land fronting on the Mississippi River, and situate in this county, and opposite to the city of Memphis, in Tennessee, and commonly known as the Hopefield tract, and containing about 420 arpens; and being parts which adjoin two Spanish confirmations or patents—one to Benjm. Foory and the other to Wm. Riggs—and having a front on said river about a mile, and beginning at the upper end, or near the termination of the military road, on the bank of said river; and that said land now is, and has long been, in lawful possession of said Claybrook for many years past, by himself, tenants, and agents; and that a public ferry at and from said place is necessary to the public convenience of the citizens and people of this county and State.

The court doth therefore order that said Claybrook have the privilege of establishing and keeping a public ferry over and across the Mississippi River, at and from said Hopefield Tract, and the front of the same; and at a point near and below the termination of said Military Road, for and during the term of one year from the 1st day of August last; for which privilege he shall pay at the rate of one hundred dollars per annum, which he now does to the sheriff of this county.

And the court orders that the rate of toll which he shall be allowed to demand shall be the same as ordered and established by this court at its July term of last year in the case of the ferry privilege granted to James Jankins, by such order to keep a ferry across said river from a point at or near the place from which the ferry now authorized is licensed to run; and the court orders that the clerk of this court do issue his license to said Claybrook, granting him the privilege aforesaid, he having in all things complied with the requirements of the law in such cases made and provided.

And now on this day came the said John S. Claybrook and presented his bond as said public ferryman, which bond was executed in the sum of two thousand dollars, with M. B. Winchester and Wm. O. D. Spain as securities, which was approved and ordered to be filed, which was done.

1854, October Term.

State of Arkansas, County of Crittenden.

At a County Court began and held at the court-house, in the town of Marion, in said county, on the 9th day of October, A. D. 1854, was present and presiding, the Hon. William Rives, Judge thereof, together with Jacob Hopper and T. B. A. Porter, associates elect; when the court was declared duly opened in course the following proceedings were had, to wit:—

Ordered that the court adjourn till to-morrow morning, nine o'clock.
W. RIVES, Judge.

Tuesday morning, 9 o'clock, October 10th, 1854, court met pursuant to adjournment. Present as on yesterday.

And now on this day came John S. Claybrook and made application to the court to renew his license as ferryman from Hopefield, opposite Memphis, Tenn., and the court being advised in the premises, it is therefore ordered that the said license be, and the same is hereby renewed, and the said John S. Claybrook is hereby authorized to keep and run a public ferry from the point aforesaid for the term of twelve months from this date, and that he be taxed the sum of sixty dollars as a tax for such ferry privilege, and that the rate of ferriage at said ferry shall be the same as was allowed by this court by order made July term, 1852. And be it further ordered that that the clerk issue a license for said ferry under the seal of this court, and deliver the same to the sheriff, and charge said sheriff with such amount in his account with the school fund of this county. It is further ordered that said John Claybrook enter into bond in the sum of one thousand dollars with good security, conditioned as the law directs.

State of Arkansas, county of Crittenden, July term, 1855.

At a County Court begun and held at the court-house in the town of Marion, in the county aforesaid, on the 9th day of July, A. D. 1855, present and presiding the Hon. William Rives, Judge thereof; and were also present Geo. W. Duke, Esq., and Henry B. Edmondson, Esq., associate justices elect; and were also present, Jacob Hopper, Esq., Burgut, Esq., and T. B. A. Porter, Esq. When the court was declared to be duly opened in course, the following proceedings were had, to wit:—

And now on this day came John S. Claybrook, and moved the court to renew his ferry-license, to keep and run a public ferry across the Mississippi river opposite the city of Memphis, Tennessee; and the court being fully advised in the premises; it is ordered that the said license be, and the same is hereby renewed; and the sum of sixty dollars is hereby levied upon the said privilege for twelve months from this date; and that the said John Claybrook enter into bond, as the law requires, in the sum of five thousand dollars, conditioned for the faithful performance of public ferryman; and that leave be granted him to file such bond during the present session of this court; and that the rate of ferriage to be charged and collected at said ferry be, and the same is hereby fixed at the same as is now allowed by the last order of this court, granting a renewal of the license at said point.

State of Arkansas, county of Crittenden, *sct.*

I, O. P. Lyles, Clerk of the Circuit Court and *ex officio* clerk of the County Court within and for said county, do hereby certify that the annexed, foregoing and within is a true copy of the record of my office as appears of record. In witness whereof, I have hereto set my hand and seal of said court this 23d day of June, 1856.

[SEAL.] O. P. LYLES, Clerk.

State of Arkansas, county of Crittenden.

I, William Rives, Presiding Judge of the County Court of the aforesaid county, do hereby certify that Oliver P. Lyles, whose genuine signature is affixed to the foregoing certificate, was at the date of said certificate the clerk of the Circuit Court, and *ex officio* clerk of the County Court, and recorder in and for said county; and as such was the proper officer to make said certificate. And I further certify that said certificate is in due form of law.

Witness my hand and private seal—there being no seal of office—this 15th day of September, A. D. 1856.

WILLIAM REEVES, Judge. [SEAL.]

State of Arkansas, county of Crittenden.

I, Oliver P. Lyles, Clerk of the Circuit Court, and *ex officio* clerk of the County Court of, within, and for said county, do hereby certify that William Rives, whose genuine signature is affixed to the foregoing certificate, was at the date of his said certificate the presiding judge of the County Court of the aforesaid county, duly qualified and commissioned as such.

Witness my hand and the seal of said court at office in Marion, in the county aforesaid, this 15th day of September, 1856.

[L. S.] O. P. LYLES, Clerk.

To which, plaintiffs' counsel objected; and the objection was overruled.

The defendants' counsel then introduced witnesses, as follows, who severally deposed as follows:—

Capt. Shaw. I have known Overton's ferry since '39. In 1849, '50, '51, knew more about them than I did previously; always kept a good boat—accommodated the travel. I think in the year '49, '50, and '51, was more crossing than before or since; part of time it paid but little, not more than expenses; 3 months in year was very profitable; in '52 they moved up to Jefferson Street, landed between Madison and Union; made their deposits with me; in summer time they had nothing to deposit; October and November were best months; one year was very good; White river packet took many; highest deposit was $140; I think about the lowest was $10 or $12, probably that was Sunday; average income in profitable season, can't say exactly—my opinion is from $55 to $60 a day, gross income; this was '49 and '50; in '51, I don't think his receipts averaged $25 a day; expense $17 to $19; in summer time about $15, balance of year; winter months they made no deposits; Jan'y, Feb'y, March, and Ap'l, travel about same—little travel; I didn't think they could make anything; since 51 business has increased considerably; Mr. Jankins, lessee of Overton, kept a good boat, built in 1850, 170 feet long; I bought the boat for Jankins; gave 6500; well manned and well attended to; capable of doing all the business, if passengers would bide their time; I ran a ferry-boat myself three years; have seen 65 or 70 wagons.

I thought Cheek was doing more than half the business; thought the lower boat made more trips; continued to run his boat that fall; I saw the boat in '52; can't say what time in '52; travel has been diverted; I think it has been diminished since the St. Francis and White River boats started in '52; two packets in '51 up White River; good many transient boats went up; Jankins had lease in his own name, Geo. Brinkley was partner; gave $500 a year for first year; $1000 a year for balance of time; profit was $2500, or $3000 was what they made in three years; these years were '50, '51, and '52; sold out early part of '53; boat was well managed. It was cold weather; was stopped a day or two; conversation occurred; I heard Cheek say he would run his boat when it suited him in defiance of anybody; can't say whether this was Nov. or Dec.; saw St. Cloud, as I think, in 1846; I think it was same boat; don't think I was ever aboard of her; I think it was in 1845 she ran White River; boat will last 4 years; that is an average—not safe after that; boat ought to run six years; I built one boat that ran 5 years; one boat is now running that is 8 years old, but she has been repaired very much. If that boat had been running since '46, I should hardly consider her a safe boat.

Cross-examined. I didn't go aboard of her; was a boat St. Cloud No. 1. This boat was St. Cloud No. 2. I am not positive, but think this was same boat that ran up White River. Jankins' certificate states boat to be about 3 years old, the other St. Cloud. My estimates were confined to '49 and '50. In '51, while opposition boat, receipts by Overton not more than $25; don't think there's much difference in 52 and 52; I think '49 was the largest year. Since '51, I think travel cross has diminished; packets up White River commenced in '52; I don't recollect but two regular packets in '51; transient boats made trips if they could get a good trip; when water is low they hunt passengers; in good water boats hunt freight; don't remember in '52, boats went into White River trade. In Sept., Oct., Nov., and Dec., I supppose would amount to $55 or $60. I don't think there was any great difference between '50 and '51; never counted travel; but don't think it made up the difference from movers taking White River route. I have been examined a great many times. Interrogated as to his affidavit. I was more familiar with the facts then than I am. From 26 Sept. to 11 Dec., 60 to 65; from 11 Dec. to 1st Jan'y, 50 a day. My opinion is, not quite 5000 in best months; 700 in Sept., 1900 in Nov.; don't know what Dec. was; my mean of deposits, I think, came up to '52; our books show that '50 was best year; that year deposits amt. in 4 mos. was about $5000. I think '50 was better than '51; not great deal of difference between '51 and '52; yellow fever, perhaps, delayed travel. I think I was examined by compl'ts before clerk and master. I thought I could carry all passengers in one day, if they began in morning. I have known 30 or 40 wagons to come on in one day. I never knew Jankins' boat to go up White River. I heard of Brinkley going up once. I suppose Cheek's boat carried good deal more than half travel rec'd; emigrants sometimes stay at Memphis several days. I have known them to camp-out 2 weeks, waiting for a packet; when they cross over ferry sometimes wait several days for their own convenience; Oct. and Nov. far best months—Nov. best; more taken in Nov. than other two months. To the best of my knowledge, St. Cloud, No. 2, landed at my boat in '46. Jankins, who gave this certificate of registration, is party to bill in chancery. I took a certificate at Cincinnati that I knew to be false, and didn't call attention to it.

Mr. Spain. I live in Crittenden County, Arkansas; I first went to Memphis in '27; have been intimately acquainted with business 6 years; I run boat of Mr. Jankins when he and Brinkly dissolved partnership, and run it alone to Dec., '54, from July, '53, for myself; bought Jankins' boat; had as good boat as I could get then; it was the Huntress; I managed it as well as I was able; there was no profit while I run it; I sunk the price of my boat; I think Mr. Cheek commenced in Sept.; consequently there was no profit; if I had had the whole travel I could have made some profit; I paid $2,500 for boat; I was residing at Hopefield some 12 or 13 years; I saw Cheek running boat in '52; the St. Cloud; but how often I can't say; I don't think they run steady, but whenever they had business; that has been his mode of business since he run ferry; I think he didn't run much in fall of '52; that boat went below Memphis for some stores, and went up Forked-Deer; I think he run whenever he had a chance of making money; I think he run that boat as long as it was safe; it became unsafe, and he bought the Falcon; I noticed boat very particularly before Mr. Cheek got her; I think it was spring of '50; had her hauled out and calked, and put a cabin of the Huntress; about water-line she was unsound; had no cabin when she came down there; I think she was old enough to lay up; I saw the I thought she was an old boat; she was as old a looking boat as I ever saw when she came there; don't know of her having any other repairs. The public road ran up by Hopefield to Mound City; then they took plank road; if anybody wanted to stay at Cheek's house they could have done so. Cheek bought Falcon before St. Cloud sunk; Falcon was very good boat; not fit for ferry; towed a flat; I reckon she was bought because St. Cloud not fit for use.

Cross-Examined. In '52 Mr. Cheek was engaged in building plank road, and perhaps building his house; I can't recollect exact date Falcon was bought; I have been only interested in ferry since '53; I sunk $2,500; I have had *had* her sold to pay her debts; I never ran her on a bar; had her pulled out and calked; I think Cheek's boat took most; I don't think in '53 I averaged more than $25 or $30 a day; I had no other business at the time but the ferry. The boat was sold for a debt of $6 or $700; I paid boat in cash; I had a family to support; I had paid $1,000 for repairing boat; St. Cloud, that I saw, made a few trips up White River, and was then sold to Cheek; Cheek frequently crossed; during time I saw Cheek running in '52 don't know that he charged anybody; Cheek and his family crossed on lower ferry; I don't know that he carried freight for anybody else; I only know I saw the boat occasionally passing; cheaper to cross at lower ferry than to get up steam; I don't recollect seeing anybody but hands.

Mr. Cook. In 1851 I was employed by Cheek on St. Cloud; I was on her when she was enjoined; he refused to stop; said he didn't care for judge, jury, or law; I and brother went up to Mound City in fall of '52; paid 25 cents each; Sept., '51, I was running St. Cloud; there was an old steamboat lying up, some little corn in it; never saw any groceries; if they had been there I think I should have seen them; didn't see any at wharf.

Cross-examined. Short time in Cheek's employ; don't know who it was took pay; old boat I spoke of was some kind of a steamboat hull; I had no connexion with Cheek after I left; I left because sick; I never had any falling out with him; no unfriendly feeling; my name was used in some matters; not with my authority.

John Brinkley. I was partner in '44. Mr. Overton had built a boat; wanted a manager; offered me ⅕ profits; I paid as good attention to it as possible; in fall of '44 told me expenses greater than profits; 500 for boat, 300 lease; I ran the White River from '48 to January, 1850; sold two boats and lease for $8000; Robert Brinkley sold to Jankins; Geo. ran to '53; Mr. Cheek wanted to form partnership; I wouldn't sell; I told Coe I wouldn't have anything to do with Cheek; about Jan. '50 I sold out to my brother Robert; sold out for $8000; in '51, when Cheek run opposition boat, Jankins and myself dissolved, and referred affairs to referees; I think profits were about $2000 after paying all expenses; from 1st Sept. to middle Dec. profits good; balance of year not good; Jankins and George Brinkley ran two years, or 2½; Robt let Jankins have boat in May, '50 till spring of '53; sold out in June '53 to Spain; sold out boat and all; *Huntress* was boat Capt. Shaw bought for Jankins & B.; when the ferry was under my control from '45 to '50, I considered she was well managed; income of my boat during full season, best year was '49; I think receipts cover $4600, gross receipts; as well as I recollect balance of year, winter months from 1st Jan'y to 1st May never paid expenses; May, June, July, and Aug. better, and paid over expenses; 1st July was average 25 c. a day; I have often offered to let anybody run her 8 months for expenses; my information is founded upon experience of 6 years; most I ever made was $1700, which was in '49; this was from receipts and expenses; my estimate of expenses was $14 a day; had boats sufficient to carry travel; in '48 paid $50 a day for a boat, when my boat sank; my largest profit was in '49; in '46 I lost, and perhaps in '47; was frequently across river in '50 and '51; I never believed there was as much travel as in '49; railroad and Cheek's road have caused more travel; packets since '50 up White River have increased; Jankins and Geo. made about $2000 while they ran; they had a good boat; I was about the river frequently in '52, and saw the St. Cloud going frequently from Mound City to Memphis; first time I noticed was when Cheek was being tried; Cheek asked if he might run boat for pleasure parties; I went to dinner; Mr. Cheek got up steam and went immediately to Mound City; this was very day proceedings were had in Circuit Court; I never examined boat.

Cross-examined. Judge didn't tell him he couldn't carry his boat to Mound City. I would say the boat running 100 times in '52—I have seen persons on board the boat, but don't know that he charged. My lease ran 6 years from 1st Jan'y, '45, to 1st July, '51. I sold out 1st Jan'y, '50—sold out at $8000 for the two boats and the lease. Don't know how old one of these boats was when I bought of M. Coe—that was not the boat that sank—but she sank while Jankins owned her. '49 was the most profitable year while I owned it—I think there was very little difference in '49, '50 and '51—I think '52 was a good year—travel for the year equal to '49—general travel '51 not equal to '49—and '52 not much difference. In '49, 4 months to Sept. to 1 Jan'y, my gross proceeds $4600—in '46 I think I lost $1000, perhaps in '47 or '48. Loss in '46 was in consequence of high water. In 1848 my extraordinary expenses was in consequence of the sinking of my boat. I paid over 1100 for charter of boat. From Jan'y to May brought me in debt—May to Sept. made some profit—my brother's loss from Jan'y to May was about $800—that was his loss. In fall of '50 there were 3 packets up White river —Julia Dean got aground '50 or '51—now as many as 5 packets. My opportunities of knowing as good as Capt. Shaw. I frequently attended to my brother's boat—I was absent in summer months, in winter was absent at New Orleans about 10 days. I referred to the books. Mr. Jankins has in Memphis attended to books—I didn't look over books when Jankins was there—when George and Jankins were present I didn't examine books. Jankins and George's profits were $2000 for 3 years. I don't remember that I ever heard my brother accuse Jankins of not accounting properly. Reference was made in Jan'y '53. I never wrote to Mr. Cheek, or any of his tribe.

Mr. Tucker. I helped to calk St. Cloud; was in bad condition. Mr. Eppason ought to have done wood work that was not done; was a plank aft that was so defective that it let down the wheel. I could drive my calking iron through at the knuckle plank; plank inside was rotten, that is between wind and winter. Suppose the boat 5 or 6 years old. I think it was in June '50. I resided opposite Memphis in '52; crossed river in '52; have seen St. Cloud pass several times going to Mound City; don't know what she was carrying; don't know whether boat ever went on any trip or not.

Cross-examined. In early part of '52 I saw St. Cloud passing—just before ice ran in '52—carried up to Island. Would rot a great deal faster when she has not been regularly calked. Under the bottom the timber was rotten—timber kept out of air and under water will rot.

Mr. Ferguson. I reside in Memphis, my former residence Crittenden County, Arkansas—settled there in 1820. I established a ferry at Black-fish Lake, on Military Road, in 1826 or '27; I have kept it up till the present time. It embraced all the travel going west till about '52 or '53, when a ferry was established that took some of the travel. Mr. Gilbert was my lessee. I only rec'd rents of ferry in those years. Gilbert commenced '46 or '47, continued 5 years. In '53-4, kept by Mr. Dune—previous to Gilbert's lease in '45 and previous, receipts received from 900 to 1200. In '31 or 32, at the time of Indian emigration, was much larger. I have not kept it myself. Travel continued to increase till the year 1849, when there was no other. In '50, '51 and '52 commenced establishing White River packets. After roads became bad, travel took boats. Emigrant travel was from Oct. and Nov; roads got bad sometime in Dec. '51, '52, '53 general travel was increased, but it took other channels. I have known families to wait a week for a river packet. More travel in '51–2 than '45–6—about one-fourth more. At time I kept ferry myself charges same as at Mississippi in '51, '52, '53—now rates about one-half. At time I kept ferry passing crossing my ferry and Mississippi. In '51, '52, '53, I judge about $\frac{1}{5}$ would take other roads. Local travel increased—difference $\frac{1}{3}$ or $\frac{1}{4}$—road spoke of opened in '49. Some crossing at Memphis—ferry goes down river. Business in '51–52 increased $\frac{1}{3}$ more, as I could guess over last year —I speak of gross receipts. I saw St. Cloud running in '52 on two occasions. Mr. Cheek bought some brick of me and carried them on his boat. In fall of '52 I travelled up on her, when Mr. Barry commanded her, and paid 25 cents—small, slender man. Bellows' lumber-yard to Overton's ferry 500 yards. There is a block of lots laid off down on batture obstructed any view of steamboat landing.

Cross-examined. My receipts amounted from 9 to $1200 from year '30 to '45; I think increased afterwards in '51; was $\frac{1}{3}$; some boats were running up White river as early as '49; during business season there were as many as six boats in '51; I think there were two regular packets in '51; my ferry is 24 miles from Memphis; by-road takes off 12 or 13 miles from Memphis; opened in '49; other road is down river road; same road takes off at Cheek's at Marion; no road leading out in Arkansas up river; not positive whether brick was carried in '52; my impression is, was '52; I am satisfied was in '52; I paid ferriage; I voted in election in Arkansas; my house in Crittenden County was not broken up till fall of '53, or early in '54; I think I have seen Barry on her; I don't recollect her running in '53; I have seen her running frequently in '52 and '53; I think it was St. Cloud; Barry was on one of the three trips on St. Cloud; I didn't see any Cheeks on board; I understood from Barry that he was hired to run; I had a suit against him.

And here defendants closed.

And the plaintiffs introduced Mr. Smith, Malone, and Spohr, who deposed as follows, to wit:—

Mr. Smith. Mr. Barry ran the St. Cloud in '53; since that time Cheek has kept up regular ferry; Barry didn't live at Mr. Cheek's in '52.

Mr. Malone. I went to work 1st day of Sept. '56 till last Monday week; during last fall I saw all that crossed; I recollect two weeks last fall, one week $915–$890; average, $75 or $80 a day; the other boat was in trade.

Mr. Spohr proves Cook's statements. Cook has no recollection of any such remarks made to Mr. Cheek or Minturn.

To which defendants objected, because it was not rebutting evidence, but evidence in chief; which objection was overruled.

And this was all the evidence in the cause: and thereon the defendants' counsel requested the court to instruct the jury as follows, to wit:—

1st. If the injunction was not wrongfully sued out upon the facts as they existed at the time it was obtained, there has been no breach of the bond, and the plaintiffs cannot recover.

2d. The injunction bond is dated Sept. 30th, 1851, and the injunction issued the same day. It is also admitted in writing before you, that defendants have held and used their ferry franchise under a grant from the County Court of Shelby ever since 1832. Now, if the plaintiffs had no ferry franchise when said injunction was obtained, and none is pretended for them, until 9th October, 1851; in such case they had no right so to run their boat as to prejudice the ferry franchise granted to defendants; and if they did so, the injunction was a proper remedy for redress, and not wrongfully issued. You are to judge from the facts in proof whether the plaintiffs so used their boat as to create a nuisance to defendants' ferry franchise.

3d. The injunction obtained on the 30 Sept., 1851, was no legal restraint on the plaintiffs against the use and exercise of their rights, if any, under the grant of a ferry franchise from Memphis to Mound City, made to them by order of the County Court of Shelby, on the 9th October, 1851, because the right is of a date subsequent to the date of the injunction. And the only legal restraint on the plaintiffs in this respect was the supersedeas at law issued in that case. For any such restraint therefore, after the 9th October, 1851, the defendants are not liable on the injunction bond, but the liability, if any, on the supersedeas bond.

4th. The fees paid by plaintiffs to their attorneys and counsel in the equity suit, are not recoverable, either as costs or damages on the injunction bond.

5th. If the plaintiffs did not obey the injunction in good faith, they are not entitled to recover on the injunction bond for any supposed restraint created by the injunction; if the injunction was evaded or not obeyed, the plaintiffs are not entitled to damages as for obedience to it. Therefore if you believe from the testimony that the plaintiffs continued to run their boat from Memphis to Mound City in Arkansas in violation of the injunction issued against them and in contempt of it, then the plaintiffs will not be entitled to recover damages upon the injunction bond.

6th. If you believe from the testimony that the plaintiffs did not run their boat from Memphis to Mound City, but discontinued it for a portion of the time during which the injunction was in existence and force against them, they will not be entitled to recover for such time, unless you further believe that they ceased to run their boat in consequence of the injunction, and not for any other cause or reason.

7th. The plaintiffs are not entitled to recover for any supposed profits which they allege they might have made by the use of this boat; and you cannot consider of such profits in the formation of your verdict, for they must be based upon conjecture, and are too vague and uncertain to form the basis of a verdict for damages.

8th. So, they will not be entitled to recover for any supposed profits that might have been made at the plaintiffs' tavern at Mound City or their grocery store. JUGA & TOTTEN,
for Defendants.

Which the court refused to do, but instructed the jury as follows, to wit:—

The court charged the jury that it was assumed in this case that Overton and others and Cheek and others were each claiming and exercising the ferry franchise at Memphis across the Missssissippi river to Arkansas. That Overton and others filed a bill in chancery at Memphis to restrain Cheek and others from transporting persons or their effects for compensation across the river within ten miles of the ferry of complainants (Overton and others), and from diverting the travel from complainants' ferry. That an injunction was obtained by Overton and others against Cheek and others; that a bond was executed with a penalty of ten thousand dollars, to be void on condition that if Overton and others should prosecute their suit with effect, or in case of failure therein pay all such damages as they or either of them may sustain by reason of the wrongful suing out said injunction, and all such costs as may accrue in consequence thereof, and perform the judgment of the court. That this case was finally heard on bill, answer, replication, and proof in the Supreme Court of Tennessee, where it was ordered, adjudged, and decreed that Overton and others had no right to the relief sought; that the injunction be dissolved, and the bill dismissed. That this suit by Cheek and others against Overton and others was thereupon instituted in this court on the injunction bond, and breaches assigned for non-payment of damages for the receipt of tolls for the transportation of passengers and their effects by Overton and others during the continuance of the injunction—for and during a period of about 18 months by Overton and others—for damages by reason of the diversion of travel from the hotel at Mound City, in Arkansas, and plank-road therefrom, in the depreciation of real estate thereat, and for the non-payment of counsel fees in the defence of the right of Cheek and others in the suit in chancery, &c. That it was now insisted by defendants, Overton and others, that Cheek and others had no right to transport passengers and their effects for compensation at the time the injunction herein was executed—the said Cheek and others having no license, as they allege, from the County Court of Shelby at that time, to wit, from 30th day of Sept., till the 9th day of October, 1851; and that having no license at that time, the subsequent continuance of the injunction in chancery for about the period of 18 months was no violation of the injunction bond, and constituted no ground of action thereupon; that it was, on the other hand, contended by Cheek and others, that Overton and others had no legal *status* in chancery—having no license from the court since 1832; that that was granted when they owned land on the river; the land, when the ferry of 1822 was established, had been conveyed; the right to claim a ferry within the corporate limits was extinguished by the dedication of promenade and accretions to the corporate authority by the original proprietors of the land; that the land of the arbitrators, Green, Reese, and Turley, declared the fee simple of the soil of dedicated ground was vested in the corporate authority, and that the license of Overton and others in 1832 did not at this time and at the place proposed constitute a license which was exclusive. That these facts were all before the Supreme Court when they made the decree in the litigation between the parties in chancery. Some $4700, which had been paid over to Overton and others, by Cheek and others under an interlocutory decree of the court for alleged violation of injunction, had been refunded to Cheek and others by the decree; that the decree of the Supreme Court embraced the whole ground, &c., and settled the rights of the parties. The court said, that these arguments and objections were all answered by reference to the decree of the Supreme Court in the suit between the parties in chancery; that the court and jury could hear nothing against said decree, nor could the parties renew a discussion of the ground on which said decree was rendered; that said decree adjudged the rights of the parties, to wit, that Overton and others had no right to restrain Cheek and others at the time of the filing of the bill, or during any or all of the time of the continuance of the injunction from transporting passengers and their effects for compensation; that the record of that case was conclusive evidence that said defendants had not prosecuted their suit with effect, and had wrongfully sued out their injunction; that the legal rights of plaintiffs having been violated by the injunction, and every violation of legal right implying a damage, the plaintiffs in that state of facts was *was* entitled to nominal damage, none other being proved. Scagemill, 59; 1 Gall., 429.

2d. The court said the injunction was obtained to restrain Cheek and others from transporting passengers and their effects, from securing tolls and diverting travel from the ferry of Overton and others; that the bond was given expressly for the purpose of indemnifying Cheek and others for the damages they might sustain by reason of the suspension of the right to transport passengers and their effects, and other damages; that this loss and this damage was within the contemplation and understanding of the parties at the time of the execution of the injunction bond, and that the liability of the parties, Overton and others, rested on the clear and indisputable ground of express contract to be so liable; that in fixing the proper amount of their verdict they would ascertain the loss, the damages the plaintiffs had sustained from that source during the entire period from the time of the issuance of the injunction to the period of its dissolution, subject to such deductions for that period for weeks and days what plaintiffs had received; that the gross amount of tolls would not be the measure of damages; but that they should take into consideration the actual net value of the tolls which would have been received at the ferry of the plaintiffs, the net value of the ferry franchise during the period enjoined; that this involved an inquiry into the expense of keeping up the ferry, and the general expense and hazard incidental to the transportation of passengers and their effects across the river at that point, and determine the profits of the ferry during the period in litigation; that the amount of net profits as ascertained by them was not laid down as an arbitrary rule by which they should adjust the amount of damages; not as a measure of the damages, but as evidence of the extent of damages, "to serve as a guide for the exercise of the discretion vested in the jury." 6 Bing., 212; 8th Peck, 356; 7 Hill, 62; Peak's Cases, 205, furnish examples of the allowance evidence of profits to go to the jury. In weighing the testimony it was proper that the jury should consider and give due force to the language of Ch. J. Nelson, in the case of Mortimer *vs.* The Authorities of Brooklyn, 7 Hill, 73; he said: "it is easy to figure out large profits upon paper; but it will be found in a large majority of cases to become seriously reduced when subjected to the hazards and contingencies incidental to actual performance." That this language was an appropriate commentary on the evidence in this case, which should be duly considered by them in fixing the amount of their verdict.

It was insisted that during the continuance of the injunction the plaintiffs, Cheek and others, violated the injunction and carried passengers and their effects; and that this amounted to a forfeiture of his right to the recovery for any portion of the time during which he was restrained. This was not the law: if the plaintiffs had during the continuance of the injunction received any portion of the proceeds of the ferry franchise, that should be taken into consideration in fixing their verdict; they should not be permitted to receive in this action what they had previously received.

Proof had been admitted going to show, that in the suit in chancery, Cheek and others had paid fees to attorneys to defend their rights, and the nature of such services according to established usage; the court said, that according to the mode of administering justice established by law, it was generally necessary to employ counsel in such cases; that if plaintiffs (Cheek and others) did employ counsel and paid them just, necessary and reasonable charges, such just and reasonable charges should be regarded as a direct, immediate and proximate loss and damage, which arose from the unlawful suing out of the information in this case; for which the plaintiffs would be entitled to reparation.

That in reference to other injuries alleged; such as depreciation of real estate at Mound City, diversion of custom from Mound City Hotel and plank-road; no claim for damage being insisted on, the court gives no charge.

The jury thereon returned a verdict for the plaintiffs. Whereon, the defendants' counsel moved the court for a new trial for the following reasons, to wit:—

1st. That the verdict is against the weight of evidence.

2d. That it is rendered for speculative damages, or for profits which might have been made by the plaintiffs in the use of their boat in running the same between Memphis and Mound City.

3d. That the charge of the court to the jury improperly and erroneously state the law.

4th. That the court erred in refusing to give the instructions, each and all, asked by the counsel for the defendants.

5th. Because the court erroneously admitted evidence to the jury of the probable profits that the plaintiffs might have made in the use of their boat in running between Memphis and Mound City in Arkansas.

Which motion was overruled by the court.

The defendants' counsel then moved in arrest of judgment, and assigned the following causes, to wit:—

1st. That it appears from the writ and declaration of the plaintiffs in this cause, that at the time of the issuance and service of said writ and declaration, and the filing thereof, that five of the said plaintiffs, to wit, S. B. Kurtis, A. G. Knapp, R. L. Kay and A. J. White are citizens and residents of the State of Tennessee and District of West Tennessee; of which said State and District the defendants were citizens and residents.

2d. That there is no sufficient cause of action set forth in plaintiffs' declaration, or in the breaches therein alleged.

3d. That there are numerous other errors in the proceedings and pleadings in this cause.

Which motion was also overruled and judgment rendered on said verdict. To all which the defendants by counsel excepts, and pray this their bill of exceptions to be signed and sealed by the said judge, which is done accordingly, and pray for *writs of error and supersedeas* to the Supreme Court of the United States, to be held at Washington city in December next; all which are granted, on defendants giving bond and security as the law requires; which said bond is duly executed before me in open court on granting the said writs, &c.

W. H. HUMPHREYS,
U. S. D. Judge.

Exhibit A.

State of Tennessee.

Pleas before the Supreme Court of said State, at Jackson, at April term, 1855, to wit:—

JACKSON, May 12th, 1855.

ROBERT C. BRINKLEY, ROBERTSON TOPP, JOHN D. ARMOUR, JAMES JANKINS, WM. L. VANCE, JOHN OVERTON and JOHN S. CLAYBROOK, Complainants,
vs.
ELIJAH CHEEK, GEORGE W. CHEEK, WM. CHEEK and Others.

Be it remembered, that this cause came on to be heard, and was heard on bill, answers, replication, exhibits and proof, before the Hon. Bobert J. McKany, Hon. Robert L. Caruthers, and Hon. A. W. O. Totten, Judges of the Supreme Court of the State of Tennessee, on this the 12th May, 1855; and it appearing that the complainants are entitled to no relief; and that the injunction granted on the prayer of said complainants ought to be dissolved; and it appearing that in the progress of the cause, defendants, Elijah Cheek, George W. Cheek and William Cheek, were by the decree and order of the court compelled to pay to said complainants the sum of four thousand seven hundred and forty-six dollars and forty cents, and also forty-eight dollars 37½ cents costs; and it appearing that said Elijah Cheek, George W. Cheek and William Cheek, have a right to have the same refunded to them with interest from the 14th day of May, 1852, the time the same was paid; and it appearing that said amounts so paid by the defendants with interest up to this time, amount to the sum of five thousand six hundred and sixty-five dollars and seventy-seven cents: It is therefore ordered, adjudged and decreed, that the decree of the court below herein rendered, be, and the same is in all things reversed and for nothing held; and that the injunction be dissolved, and the bill dismissed; and that complainants, Robert C. Brinkley, Robertson Topp, John D. Armour, James Jankins, William L. Vance, John Overton and John S. Claybrook, pay to defendants, Elijah Cheek, George W. Cheek and William Cheek, the aforesaid sum of five thousand six hundred and sixty-five dollars and seventy-seven cents, ($5,665 77), for which execution may issue as at law.

It is further ordered, adjudged and decreed, that the costs accruing on the taking of the proof and stating the accounts in which the interlocutory decree above referred to was founded, be paid by the complainants, and the residue of the costs shall be divided between the parties, for which execution may issue as at law.

State of Tennessee.

I, Wm. H. Stephens, Clerk of the Supreme Court of said State at Jackson, certify that the foregoing is a full, true and perfect transcript of the decree of said court in the case therein stated, as the same appears of record. Given under my hand at office this 10th day of April, 1847. WM. H. STEPHENS, Cl'k, &c.

Exhibit B.

U. S. Ct. Court, Dist. of West Tennessee, April term, 1857.

GEO. W. CHEEK *et als.*
vs.
JOHN OVERTON *et als.*

Defendants in this case admit that the land in front of the town of Memphis, known as the "public landing," extending from Market street north to the mouth of Bayou Gayoso, was held by the proprietors of the city of Memphis, to the city of Memphis, according to the deed herewith exhibited marked A, for the purpose of a naval depot to be constructed by the U. S. Government, was sold by the city of Memphis to the Genl. Government in 184 , and was receded by the U. S. Government to the city of Memphis in 1854.

Defendants further agree that the award of Judges Green, Reese and Turley in the matters referred to them, may be read in evidence without formal proof of the same—subject only to legal exceptions as to its competency and relevancy.

April 8th, 1857. ED. M. FORGA, for Defendants.

Exhibit C.

This indenture, made and entered into on this the day of July, 1844, between John S. Claybrook, as executor of John Overton, deceased, John C. McLemon, the heirs and devisees of James Winchester, deceased, by their attorney M. B. Winchester, the legal representatives of the late William and George Winchester interests, by M. B. Winchester, agent and attorney in fact, and Robertson Topp and William L. Vance of the first part; the Mayor and Aldermen of the town of Memphis of the second part; John D. Martin, Thomas M. Fletcher and Walter D. Daleury of the third part; and Seth Wheatley as trustee of the fourth part; Witnesseth: That whereas divers questions have arisen between the three first mentioned parties as to the ownership of the alluvial land formed by the Mississippi river on the western boundary of the tract of 5000 acres of land in Shelby County, Tennessee, granted by the State of North Carolina to John Rice, by grant No. 283, dated 25th April, 1789, upon which said tract of land the town of Memphis was laid out, the said parties of the 1st part being the original proprietors of such town, or their representatives: And whereas the location of the Naval Depot lately established by the United States at said town, and the general interests of the citizens and property holders thereof, require that the title to that part of said alluvial land which lies next to the public promenade, and public landing as dedicated on the behalf of Memphis by the said original proprietors, shall be withdrawn from all litigation, so that no obstacle shall stand in the way of the immediate commencement of the public works aforesaid, and that the threatened decline and removal of the town may be prevented by affording opportunity for doing *for doing* business at or near the water's edge. Now, therefore, in consideration of the premises, the said parties of the first and third parts give and grant to the said parties of the second part, and their successors forever, for the location of the Naval Depot aforesaid all that portion of the said alluvial land within the limits of the town of Memphis which lies north of Market street extended and westwardly to the Mississippi river. And for the same consideration and the further sum of five dollars in *in* hand paid, the parties of the first, second and third parts do give, grant, bargain, sell, enfeoff and convey unto the said party of the fourth part and his heirs forever, all the rest and the residue of the said alluvial land south of Wolf river, and also that part of said alluvial land above mentioned and designated for the Naval Depot, in case the same shall not be appropriated by the United States for that purpose.

To have and to hold the above described land, with all and singular the appurtenances thereunto belonging, or in anywise appertaining (except the right of ferriage, and the right of wharfage hereinafter reserved), unto him, the said party of the fourth part, and his heirs and assigns forever. In trust, however, that the said party of the fourth part shall cause the said alluvial land to be laid out into lots, extending the streets and alleys of Memphis in a direct line to the river, and leaving a street of convenient but specific width at the water's edge. The space between Washington and Poplar streets, inclusive of those streets, and extending from the bluff to the water's edge, shall be left and appropriated for a public landing, to be well prepared and constructed, with all proper grades and streets, by the said party of the second part at their own cost. The lots to be laid off by the said party of the fourth part shall be sold and conveyed by him, at public or private sale, in his discretion, on a credit of one, two and three years, reserving a lien upon the property for the purchase money. If the alluvial land should hereafter increase by accretions from the river, the new land shall be laid off into lots and sold as hereinbefore provided, still extending the streets and alleys to the river, and leaving a street in front, of specific width, at the water's edge, as provided above. The proceeds of the sale of said lots, after paying all the expenses of executing this trust, shall, from time to time, be divided among the parties aforesaid, in the following manner, to wit: one-half to the parties of the first part, one-sixth to the party of the second part, and one-third to the parties of the third part. It is expressly understood and agreed, that nothing herein expressed shall be so construed as to effect the question of the right of wharfage between the parties of the first and second part, and the right of ferriage as now claimed and exercised by the parties of the first part. The said parties of the third part relinquish all claim to the right of wharfage to the parties of the second part; and the right of wharfage along the whole front of the said alluvial land, including the streets, alleys and public landings, shall stand on the same footing as if this indenture had not been made, and shall be determined by the rights and titles of the said parties of the first and second parts as the same existed prior to this conveyance. The said parties of the first and second parts agree to arbitrate the question of wharfage, by submitting the decision of the same to three able jurists, to be selected by the governor of Kentucky, whom he may be when the selection may be required; either of said parties may submit a copy of this instrument to said governor of Kentucky for the selection of said jurists, which shall be in writing and under the great seal of the State. And if said jurists should refuse to act, the said governor may appoint others in like manner, as often as may be necessary; after the selection of said jurists, the parties of the first part shall fix the time and place for the arbitration, and give 60 days' notice thereof to the parties of the second part. The said arbitrators shall determine which of said parties of the 1st and 2d parts are, in law and equity, entitled to receive the wharfage on the alluvial land aforesaid—allowing to both parties the full benefit of any legal advantage, as if it were a trial at law or in equity—and their award shall be binding and conclusive on the said parties. The unsuccessful party shall relinquish to the other all claim whatever to the said right of wharfage from the time of arbitration, and the successful party shall pay all the costs and expenses of the said arbitration. Testimony heretofore taken in any suit between any of the parties to this instrument, or others relative to the land in question, may be read before said arbitrators; and other testimony may be taken at any time by either party before a justice of the peace in any State, by giving reasonable notice to the opposite party; all suits involving the matters herein compromised to be discontinued; each party paying their own costs. The 1st and 3d parties waive all claim to wharfage heretofore received, and which may be received to the time of final decision.

In testimony whereof, the parties of the first, third and fourth parts have affixed their hands and seals; and the parties of the second part have hereunto affixed their corporate seal, attested by the mayor and recorder of said town, on the day and year first mentioned, to duplicates.

JOHN S. CLAYBROOK, [SEAL.]
Executor of JOHN OVERTON, deceased.
JOHN C. McLEMON, [SEAL.]

By M. B. WINCHESTER, Special Agent
and Attorney in fact.
Heirs and Devisees of JAMES WINCHESTER, [SEAL.]
By M. B. WINCHESTER, Special Agent
and Attorney in fact.
Legal Representatives of WM. & GEO. WINCHESTER, [SEAL.]
By M. B. WINCHESTER, Special Agent
and Att'y in fact.
ROBERTSON TOPP, [SEAL.]
WM. L. VANCE, [SEAL.]
By R. TOPP,
E. HICKMAN, Mayor of Memphis.
WALTER D. DABNEY, [SEAL.]
JNO. D. MARTIN, [SEAL.]
SETH WHEATLEY, Trustee. [SEAL.]

Witnesses present:
J. H. LAURENCE, for all except Vance and Topp.
Sept. 12, 1844. For Robertson Topp:
B. H. PRYOR, WM. A. MAYNARD.

State of Tennessee, Shelby County, *sct.*

Personally appeared before me, John W. Fallen, Clerk of the County Court of said county, John S. Claybrook, executor of John Overton, deceased, one of the within named bargainors, with whom I am personally acquainted; John C. McLemon, one of the within named bargainors, by M. B. Winchester, special agent and attorney in fact, with whom I am personally acquainted; the heirs and devisees of James Winchester, one of the said bargainors, by the said M. B. Winchester, special agent and attorney in fact; the legal representatives of William and George Winchester, one of the within named bargainors, by the said M. B. Winchester, special agent and attorney in fact; Robertson Topp, one of said bargainors, with whom I am personally acquainted; William L. Vance, one of said bargainors, by the said Robertson Topp; Edwin Hickman, Mayor of Memphis, one of said bargainors, with whom I am personally acquainted; Walter D. Dabney, one of said bargainors, with whom I am personally acquainted; John D. Martin, one of said bargainors, with whom I am personally acquainted; Seth Wheatley, one of said bargainors, with whom I am personally acquainted, who acknowledged the execution of the within named deed, for the purposes therein contained. Witness my hand, at office, September 17th, 1844. JOHN W. FALLEN, Clerk, &c.

State of Tennessee, Shelby County.

The foregoing trust deed was filed in my office for registration on the 7th day of January, 1845, at 4 o'clock P. M., and is noted in note-book No. 1 page 170—and was duly recorded on the 10th of the same month. WM. P. REAVES, Register.

State of Tennessee, County of Shelby.

I, Henry Lake, register for the county of Shelby and State aforesaid, do hereby certify that the foregoing contains a full, true, and perfect transcript of the deed of trust made by the original proprietors of Memphis, mayor and aldermen of Memphis, and by Robertson Topp, W. L. Vance, W. D. Dabney, and John D. Martin to Seth Wheatly, as trustee, &c., for the purposes therein named, as the same is now of record in my office. Witness my hand at office, 1852. HENRY LAKE, Register.

Exhibit D.

By authority of the United States of America, port of Memphis, State of Tennessee.

Be it known to all whom it may concern, that on the 24th day of March, one thousand eight hundred and fifty-two, I, James Jankins, Inspector of vessels, propelled in whole or in part by steam, for the port of Memphis, being duly appointed, commissioned, and sworn for that purpose, at the request of G. W. Cheek, of the steam vessel called the St. Cloud, repaired on board said vessel, then lying within the district of Memphis, and examined the condition of the hull and appurtenances of said vessel, and do hereby certify, that the said vessel was built at Zanesville, State of Ohio, in the month of 1849, is three years old; and that in my opinion the said vessel is sound and in all respects seaworthy, and is fit for the transportation of freight and passengers. Given under my hand at the said port of Memphis, this 24th day of March, one thousand eight hundred and fifty-two. JAMES JANKINS, Inspector.

Exhibit E.

Enrolment.

Enrolment in conformity to an act of the Congress of the United States of America, entitled an act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same. Henry Stull, of Zanesville, Ohio, having taken or subscribed the oath required by the said act, and having sworn that he is owner of the steamboat St. Cloud, as hereafter stated, and is a citizen of the United States, and sole owner of the ship or vessel called the St. Cloud of Zanesville, Ohio, whereof Henry Stull is at present master; and he hath sworn is a citizen of the United States; and that the said ship or vessel was built at Olive Green, Ohio, in the year of 1849, as appears by the affidavit of the said Henry Stull—the former papers being lost. Certificate of the boiler inspection being filed; and the surveyor of this port having certified that the said ship or vessel has one deck and no mast, and that her length is ninety-seven and one-half feet, her breadth nineteen and one-half, her depth three feet 9 inches, and that she measures sixty-five $\frac{60}{95}$ tons ; further sets forth, that she is a steamboat, has wheel stern, cabin on deck, and plain head. And the said Henry Stull having agreed to the description and admeasurement above specified, a sufficient security having been given according to the said act, the said steamer St. Cloud has been duly enrolled at the port of Wheeling. Given under my hand and seal at the port of Wheeling, Virginia, this third day of December, in the year one thousand eight hundred and fifty.

No. 31. Permanent. When surrendered. Date of surrender, day of Cause of surrender.

E. B. SWEARINGEN, Surveyor.

Endorsed: I assign the within to Messrs. Park, Kinman & Co. for value received, 29th March, 1851. H. STEELE.

We hereby assign the within enrolment for value received to G. W. Cheek & Co., this 6th day of Sept., 1851.

PARK, KINMAN & CO.

Exhibit F.

Enrolment.

Enrolment, in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same."

George W. Cheek, of Mound City, Arkansas, having taken or subscribed the oath required by the said act, and having shown that he is the owner of steamboat St. Cloud, as hereinafter stated, and is a citizen of the United States, and sole owner of the ship or vessel called the St. Cloud of Olive Green, Ohio, whereof George W. Cheek is at present master, and, as he hath shown, is a citizen of the United States; and that the said ship or vessel was built at Olive Green, Ohio, in the year 1849, as per certificate of enrolment, dated Wheeling, 3d December. And the said certificate of enrolment having certified, that the said ship or vessel has one deck and no masts, and that her length is $97\frac{1}{2}$ feet, her width $19\frac{1}{2}$ feet, and her depth $3\frac{3}{4}$ feet, and that she measures $65\frac{66}{95}$ tons; and further certifies, that she is a steamboat, has a cabin on deck, and plain head. And the said George W. Cheek, having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said St. Cloud has been duly enrolled at the port of Memphis. Given under my hand and seal, at the port of Memphis, this 28th day of August, in the year one thousand eight hundred and fifty-two.

[SEAL.] HIRAM F. HILL,
Surveyor and Inspector.

Exhibit No. 1.

George W. Cheek et al.
vs.
John Overton et al.

U. S. Circuit Court, District of West Tennessee, April term, 1857.

In this cause, plaintiffs admit that the State of North Carolina granted in 1789 to John Rice the 5,000 acre tract of land on which the town of Memphis now stands, including the whole front of the City of Memphis on the Mississippi River down to low water mark; that defendants in this cause, or those under whom they claim, are grantees of this land, and laid off the town of Memphis on the same in 1819 or 1820; and that John Overton established a ferry in 1832, in pursuance of license from the legal authorities of Tennessee, on that portion of the river front in Memphis known as the "public landing," being part of the land granted as aforesaid to John Rice, and by him sold and conveyed to these defendants, or those under whom they claim, and is the same ferry now in use and kept up by defendants, and is the same they were using and keeping up as a public ferry across the Mississippi River at the time of their filing of their injunction bill against plaintiffs in the Chancery Court at Memphis, and at the time of the issuance of the writ of injunction; but did not have their ferry-landing in Memphis in that part of the town designated on the plan as the "public landing" after the year 184 , but had it in said city of Memphis, and within the limits of said tract granted to John Rice.

Plaintiffs further admit, that the order of Shelby County Court granting them license to establish a ferry from Memphis to Mound City, in Arkansas, made 9th October, 1851, was suspended and superseded by a writ of supersedeas issued day of October, 1851, upon the fiat of Hon. J. C. Humphreys, Judge of the 11th Judicial Circuit of Tennessee; and that said writ was executed on them on day of October, 1851, and continued in effect and operation until day of April, 1854, when the Supreme Court of Tennessee decided the said matter in favor of plaintiffs and affirmed the judgment of Shelby County Court, and remanded the cause to said court, with instructions to grant to plaintiffs their privilege of keeping a ferry, as will fully appear by reference to the judgment of said Supreme Court. BANKHEAD, Att'y for Plaintiffs.

April 8th, 1857.

United States of America, *scilicet.*

I, James L. Talbot, clerk of the Circuit Court of the United States in the Eighth Circuit, for the District of West Tennessee, do certify that the foregoing transcript is a full, correct, and complete exemplification of the records and proceedings of the said court in the case of *Elijah Cheek and George W. Cheek*, plaintiffs, and

Robert C. Brinkley, John Overton, Robertson Topp, and James Jankins, defendants, as the same are of record and on file in my office.

In testimony of all which I hereto place my hand and affix the seal of said court. Done at office in the town of Jackson, on the twenty-second (22d) day of March, in the year one thousand eight hundred and sixty, and in the 84th year of American independence.

[SEAL.] JAS. L. TALBOT,
Clerk, &c., as aforesaid.

Filed 4th June, 1860.